

# DIGEST OF CASES REPORTED IN

# THE SOLICITORS' JOURNAL & WEEKLY REPORTER

## VOLUME 55.

### ADMINISTRATION:—

1. *Administration bond—Condition to render a true and just account whenever required by law so to do—Particular breaches not alleged—Statute 8 & 9 Will. 3, c. 11, s. 8.*—An administration bond containing the usual conditions is a bond within the provisions of the Statute 8 & 9 Will. 3, c. 11. —*COPE v. BENNETT, Swinfen Eady, J., 521.*

2. *Order for sale of real estate—Conversion.*—An absolute order for sale of real estate made within the jurisdiction of the court in an administration action operates as a conversion of such real estate into personality from the date of the order. —*FAUNTLEROY v. BEERE, C.A., 497.*

See also Probate.

### AGRICULTURAL HOLDINGS:—

*Agricultural Holdings Acts—Tenancy from year to year—Market garden—Compensation for improvements.*—A tenant from year to year of a market garden, who had been in possession under a tenancy which commenced before the 1st of January, 1896 (without an agreement in writing that the premises should be treated as a market garden, although to the knowledge of the landlords they were so used), is not entitled to recover compensation for improvements executed without the written dissent of his landlord, after the earliest day on which, if notice to quit had been given on the above date, his tenancy would have expired. —*KEDWELL v. FLINT, C.A., 311; 1911, 1 K. B. 797.*

### ANIMAL:—

*Savage horse—Injury to trespasser—Path across field admittedly not a public way, but one constantly used by public—Liability of owner who tacitly permits trespass by public.*—The plaintiff, while passing through a field belonging to the defendant, in which he had no right to be, but which was habitually used by the public as a near cut to the railway station, was attacked by a horse belonging to the defendant and injured. The defendant knew that the public were in the habit of going into the field and that the horse was savage.

Held, restoring the judgment of the county court judge in favour of the plaintiff, that, although the plaintiff was a trespasser, nevertheless the fact that the defendant knew that persons constantly crossed the field placed duty on him to see that they were not exposed to a danger, the existence of which they were not warned against.

*Per Lord Halsbury.*—Persons who used the field ought to have been warned of the danger.

*Per Lord Atkinson.*—The defendant is liable, as he owed a duty to the public which he has failed to discharge. —*LOWERY v. WALKER, H.L., 62; 1911, A.C. 10.*

### APPOINTMENT:—

1. *Power of appointment—Perpetuities—Remoteness—Absolute or qualified interests.*—A power was given by a testatrix to her daughter to appoint certain funds by deed or will among the daughter's children or issue, limited to take effect after the death of the survivor of the daughter and any husband she might marry.

Held, that the appointment by the daughter of absolute and transmissible interests was void for remoteness, even though she in fact survived her then husband, and did not marry again.

But (semble) qualified interests might be validly appointed by her under the power. —*RE NORTON, NORTON v. NORTON, Joyce, J., 169.*

2. *Power of appointment—Special power—Appointment equally by will among all the objects—Subsequent appointments by deed poll—Ademption—Rule against double portions—"Portion."*—A

testator who had a special power of appointment by deed or will over a fund of which he was tenant for life, exercised the power by will equally among seven objects of the power. By two deeds poll, executed subsequently, he appointed two equal seventh shares to F. and E., two of the objects of the power, respectively, subject to his life interest. On his death the question arose whether the remaining five-seventh shares of the fund were to be divided equally among the seven objects of the power including F. and E., or whether the shares of F. and E. under the will were adeemed.

Held, that the rule against double portions applied, and that the shares of F. and E. under the will were adeemed by the appointments to them by deed. —*MONTAGUE v. MONTAGUE (1852, 15 Beav. 565) followed.* —*RE PEEL'S SETTLEMENT. BIDDULPH v. PEEL, Joyce, J., 580; 1911, 2 Ch. 165.*

3. *Power of appointment—Will—Execution of power—Void condition—Severance of condition and appointment—Condition that appointee should pay off debts of appointor.*—A. was the life tenant of a fund, with power to appoint a life interest in the whole or part of the income to any wife who might survive him. He exercised the power in part unconditionally, and in part by appointing (if he should die insolvent) an annuity, of which the greater part was to be used in paying off his debts. Held, that the appointment of the annuity could not be separated from the condition, and that the execution of the power was fraudulent and void. —*RE COHEN, BROOKS v. COHEN, Joyce, J., 11; 1911, 1 Ch. 37.*

See also Will.

### APPRENTICE:—

*Apprenticeship deed—Architect—Restrictive covenant by infant not to practise—Breach of covenant—Injunction after apprenticeship and attainment of majority.*—Although an action cannot be maintained to enforce a covenant by an infant in an apprenticeship deed during the infancy of the apprentice, it can be maintained after the apprenticeship has ceased and the apprentice has attained twenty-one, provided the covenant is on the whole for the benefit of the apprentice.

Where the only terms on which an apprentice could obtain instruction were that he should enter into a covenant not to carry on his master's business after the end of his apprenticeship within a certain radius of the place in which he had been instructed for a certain number of years.

Held, that such a term was reasonable and capable of being enforced against the apprentice by injunction on the expiration of the apprenticeship and after he had attained his majority. —*GADD v. THOMPSON, K.B.D., 156; 1911, 1 K. B. 304.*

### BANKER:—

*Banker and customer—Agent—Money paid into agent's account—Determination of agency—Disposal of undrawn balance.*—When a principal places money in a bank on the terms that a named agent shall draw upon it, he retains the power, upon the proper determination of the agency, to require the bank to return the unpaid balance to him. —*SOCIETE COLONIALE ANVERSOISE v. LONDON AND BRAZILIAN BANK, K.B.D., 460.*

### BANKRUPTCY:—

1. *Act of Bankruptcy—Bankruptcy notice—Address of judgment creditor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-section 1 (g)—Bankruptcy Rules, 1886-1890, r. 136, Form 6.*—A judgment creditor, having two houses in different parts of England, inserted in a bankruptcy notice the address of the house from which he was absent during the currency of the bankruptcy notice. His butler was at the address given in the notice, and was authorized to receive payments on behalf of his master, or

could have sent for him at any time during the currency of the notice.

Held, that the address given was sufficient, and that the bankruptcy notice was good.

Decision of the King's Bench Division (reported *ante*, p. 220) affirmed.—*RE PERSSE, C.A.*, 314.

2. *After-acquired property—Choses in action—Settlement on marriage—Bona fide—Valuable consideration—Notice—Non-intervention of trustee in bankruptcy.*—The rule in *Cohn v. Mitchell* (38 W. R. 551, 25 Q. B. D. 262) extends to choses in action, and that though notice of the bankruptcy precedes notice of the subsequent dealing, and although the person dealing with the bankrupt has notice of the bankruptcy. Further, a bona fide marriage settlement is a dealing for value within the meaning of the rule.

A settlement executed upon and in consideration of his marriage by an undischarged bankrupt of a right, which accrued to him after the bankruptcy, to a fund in the hands of trustees in favour of his wife will be upheld against the trustee in bankruptcy if the transaction was a bona fide one on the part of the wife, although prior to the settlement both she and the trustees of the fund knew of the bankruptcy, provided that the trustee in bankruptcy had not intervened.—*RE BEHREND'S TRUST, SURMAN v. BIDDLE, Swinfen Eady, J.*, 459; 1911, 1 Ch. 687.

3. *Ante-nuptial settlement—Intent to defeat or delay creditors—Inference of intent—13 Eliz. c. 5—Interest to daughter by previous marriage.*—A voluntary settlement may be declared void, as against the settlor's trustee in bankruptcy, without proof of actual intention to defeat or delay creditors, if the circumstances of the particular case be such that the settlement must necessarily have that effect. A settlement by a widower on remarriage is voluntary as regards a daughter by a previous marriage interested therein.

*Freeman v. Pope* (L. R. 5 Ch. 538) followed.—*CARRUTHERS v. PEAKE, Warrington, J.*, 291.

4. *Appeal—"Person aggrieved"—Administration of estate of deceased debtor—Petition by person who has become creditor of the estate since the death of the debtor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 104, 125.*—A person who has taken out an originating summons for the administration of the estate of a deceased person in the Chancery Division is "aggrieved" by an order for the administration of such estate in bankruptcy, and has a right to appeal against such order.

An order for the administration of the estate of a deceased debtor in bankruptcy can only be made at the instance of a petitioner, whose debt has been incurred during the lifetime of the debtor.—*RE KIRSON, Bkcy.*, 443; 1911, 2 K. B. 109.

5. *Appeal—Time for bringing—Special circumstances—Mistake—Bankruptcy rules, r. 130.*—A mistake of law made by the appellant's solicitor does not constitute special circumstances entitling the appellant to an extension of time for bringing the appeal.—*RE A DEBTOR* (No. 692 of 1910), *C.A.*, 48.

6. *Bankruptcy notice—Final judgment recovered by a firm—Subsequent dissolution of partnership—Notice to pay the firm or their solicitors—Bankruptcy Act, 1883 (46 Vict. c. 52), s. 4, sub-section 1 (g).*—A bankruptcy notice, which calls upon the debtor to pay the amount of the judgment debt to the judgment creditors "or to their solicitors" is bad for want of accordance with the terms of the judgment.—*RE A DEBTOR, EX PARTE KITCHEN, C.A.*, 553.

7. *Bankruptcy notice—Interest on judgment—Non deduction of income tax—Bankruptcy Act, 1883, s. 4 (1)—Income Tax Act, 1842, s. 102—Income Tax, 1853, s. 40—Customs and Inland Revenue Act, 1888, s. 24, sub-section 3.*—A bankruptcy notice which claims interest on the amount of the final judgment on which it is based is not bad because it claims the whole amount of such interest due without deducting income tax therefrom.—*RE BOULTER, Bkcy.*, 554.

8. *Bankruptcy notice—Stay of execution—Issue of Bankruptcy notice pending equitable execution—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-section 1 (g).*—A creditor who has obtained a receivership order by way of equitable execution against the debtor is not thereby precluded from issuing a bankruptcy notice during the receivership as he would be in the case of a pending execution by *fi. fa.* —*RE LUPTON, EX PARTE LUPTON, Bkcy.*, 717.

9. *Costs—Taxation—Employment of solicitor by official receiver with sanction of Board of Trade—Limit of amount of costs to be incurred—Bankruptcy Act, 1883 (66 & 67 Vict. c. 52), s. 73—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 15.*—When the Board of Trade, in sanctioning the employment of solicitors to act for the official receiver in a bankruptcy, limit the amount of the costs to be incurred, they are at liberty to extend such limit even

after the completion of the work on which the solicitors have been employed.—*RE LAWRENCE & PORTER, Bkcy.*, 94.

10. *Costs—Taxation—Sheriff's "Costs of execution"—Costs of interpleader summons—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 11—Bankruptcy Rules, 1886-1890, rr. 118, 119.*—Where a sheriff has seized under a writ of *fi. fa.* and a claim has been made on the goods, and the sheriff has taken out an interpleader summons, and a receiving order has been made before the sale of the goods has taken place, the sheriff is not entitled to take his costs of the interpleader proceedings out of the bankrupt's estate, for they are not "costs of execution" within section 11 of the Bankruptcy Act, 1890.

Decision of Phillimore, J. (*ante*, p. 78), reversed.—*RE ROGERS, C.A.*, 219, 1911; 1 K. B. 641.

11. *Deed of arrangement—Validity of registration—Defect in attestation of oath to affidavit—Bankruptcy notice—Bankruptcy of judgment creditor—Leave to trustee to issue execution—Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), ss. 5, 6—Commissioners for Oaths Act, 1889 (52 Vict. c. 10), s. 1, sub-sections 2, 3—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 45—Bankruptcy Act, 1890 (51 & 52 Vict. c. 71), s. 1—Rules of the Supreme Court, XVII. 4, XXXVIII. 16, XLII. 23.*—Where the affidavits required to be sworn by a debtor upon the registration of a deed of arrangement have been sworn before a commissioner for oaths who is a solicitor to the trustee under the deed, the registration and the deed are thereby invalidated. Where a judgment creditor has become bankrupt the trustee in his bankruptcy can issue a bankruptcy founded on the judgment, provided that he obtains leave to issue execution thereon, under ord. 42, r. 23, and need not be made a party to the action in which the judgment was obtained under ord. 17, r. 4.—*RE BAGLEY, C.A.*, 48, 1911, 1 K. B. 317.

12. *Meeting of creditors—Quorum—Persons entitled to vote at meeting—Bankruptcy Act 1883 (46 & 47 Vict. c. 52), Schedule I, rr. 8, 14, 23—Bankruptcy Rules, 1886-1890 r. 257.*—In calculating a quorum of creditors present at a first meeting of creditors only those who have lodged proofs can be calculated, consequently if there is only one creditor present who has lodged a proof he forms a quorum, and can carry a resolution for the appointment of the trustee.—*RE CAEMEN THOMAS, EX PARTE WARNER, Bkcy.*, 482.

13. *Petition—Sufficient cause for dismissal of petition—Assent to deed of assignment—Petition founded on non-compliance with bankruptcy notice—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 7, sub-section 3.*—A creditor who knows that his debtor is insolvent is entitled to refuse openly to assent to a deed of arrangement unless he gets payment in full, and to sue such debtor to judgment, and to obtain a receiving order founded on the non-compliance of the debtor with a bankruptcy notice issued in accordance with such judgment.—*RE SUNDERLAND, EX PARTE LEACH, C.A.*, 568.

14. *Property of the bankrupt divisible among his creditors—Superannuation allowance—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 44, 53—Superannuation Act, 1889 (9 Ed. 7, c. 10), s. 1.*—A lump sum granted by the Treasury by way of additional allowance, under section 1, sub-section 2, of the Superannuation Act, 1909, to a retiring civil servant who is an undischarged bankrupt forms part of his property divisible among his creditors, and must be paid to the trustee in his bankruptcy.—*RE LUPTON, EX PARTE THE OFFICIAL RECEIVER, Bkcy.*, 689.

15. *Bill of sale—Fraudulent conveyance—Consideration—Defeasance—Bill of Sale Acts, 1878, s. 10 (3); 1882, s. 8.*—Where A. had borrowed a sum of money from B. and lent the same to himself and his co-trustee C., and A. and C. had given a bill of sale to B. to secure a loan, it was held that the consideration was truly stated as a loan from B. to A. and C. A. and C., prior to the granting of the bill of sale, had given mortgages of leaseholds to B. to secure the same loan.

Held, that the mortgages did not operate as a defeasance of the bill of sale.—*RE JONES, EX PARTE OFFICIAL RECEIVER, Bkcy.*, 30.

#### CHARITY:—

*Mortmain—Testator domiciled in England—Bequest to charity—Colonial mortgages—Colonial Mortmain Law—Moveables or immovables.*—A bequest by a domiciled Englishman of mortgages of colonial land to a charity was held invalid, the mortgages being immovables, and the *lex loci* which forbade such a disposition applying.—*RE HOYLE, ROW v. JAGG, C.A.*, 169; 1911, 1 Ch. 179.

#### COMMONS:—

*Right to pasture sheep on Dartmoor—Obligation of occupier of land to fence against commonable cattle—Scotch sheep—Duty to fence against cattle of a peculiar disposition—Distress damage feasant—Sheep driven to a ground more than three miles distant—1 Ph. & Mary, c. 12 (1).*—An occupier of land adjoining other land

over which rights of common exist is bound to fence his land against commonable cattle of a kind usually found upon the land in question, but is not bound to fence against commonable cattle which are of a peculiar disposition in that they are more inclined to wander or are more active than other animals of the same species.

Where a distress is levied upon animals *damage feasant* under 1 Ph. & Mary, cap. 12 (1) the limit of three miles imposed by the section, to which such animals may be driven to a pound, has no application when the pound is in the same hundred in which the distress is taken.—*COAKER v. WILLCOCKS, K.B.D.*, 155; 1911, 2 K. B. 124.

#### COMPANY:—

1. *Capital—Increase—Resolution empowering directors to increase capital by creation of new shares—Right of shareholders to decide in general meeting on what terms shares shall be issued by directors.*—Article 53 of the articles of association of a company provided that its capital might be increased by the creation of new shares. Article 59 provided that "any new shares from time to time to be created might from time to time be issued with any such guarantee or any such right of preference . . . over any shares previously issued . . . or at such a premium or with such deferred rights as compared with any shares previously issued . . . on such terms as the company might from time to time by resolution of a general meeting declare." At extraordinary general meetings of the company certain special resolutions were passed, among them one substituting for the words "in general meeting" in article 53 the words "by resolution of the directors." Subsequently the directors passed a resolution to increase the company's capital by the creation of 125,000 new shares at £1 each. In an action by a shareholder claiming a declaration that the proposed issue of new shares by the directors was *ultra vires*, *Eve, J.*, dismissed the action. The Court of Appeal allowed the plaintiff's appeal on the ground that, assuming the directors had power to create new shares by resolution (as to which they gave no decision), nevertheless their power did not extend to issuing the new share capital without a resolution in general meeting sanctioning the terms on which such shares were to be issued, as provided by article 59. The contemplated issue was therefore *ultra vires*, and the plaintiff was entitled to the injunction he sought.

On appeal, the decision of the Court of Appeal (55 SOLICITORS' JOURNAL, 44; 1911, Ch. 73) was affirmed.—*KOFFYFONTEIN MINES v. MOSELY, H.L.*, 551; 1911, A.C. 409.

2. *Commission for procuring subscriptions for shares—Private company—Companies (Consolidation) Act (8 Ed. 7, c. 69), s. 89.*—Section 89 of the Companies (Consolidation) Act, 1908, which affords a company power to pay certain commissions and prohibits the payment of all other commissions for subscribing or procuring subscriptions for shares, applies to private as well as to public companies.—*DOMINION OF CANADA GENERAL TRADING AND INVESTMENT SYNDICATE v. BRIGSTOCKE, K.B.D.*, 623.

3. *Debenture—Covenant to pay off on or after a certain date—Debentures to be paid off to be selected by ballot—Repugnancy.*—A company issued debentures which they covenanted to pay off on or after the 1st of January, 1898, the debentures to be paid off being selected by ballot, and six months' notice being given to the holders thereof. The company contended that the debentures were repayable after the 1st of January, 1898, only after a ballot had been held, and six months' notice had been given to the holders of the drawn debentures.

Held, that inasmuch as the covenant created a liability to pay on or after the date specified upon demand, the clause seeking to limit its operation to such debentures as should be drawn by ballot was void for repugnancy.—*RE TEWKESBURY GAS CO., Parker, J.*, 616.

4. *Debenture-holder's action—Jurisdiction to direct a sale—Company in which the public have rights and interests.*—Having regard to its character, and the provisions contained in the Act by which it was constituted, and in its original deed of settlement and charter, the Crystal Palace Co. is not a company of such a class that the rights and interests of the public in the company prevent the court from directing a sale of its undertaking and property. A proper case being made out, a sale was directed accordingly.—*RE CRYSTAL PALACE CO., Swinfen Eady, J.*, 348.

5. *Debenture trust deed—Majority clause—Validity—Arrangement or compromise.*—The trust deed securing debentures of the defendant company contained a clause authorizing a general meeting of debenture holders by extraordinary resolution to assent to any arrangement or compromise proposed to be made between the company and the debenture holders, provided that it was one which the court would have jurisdiction to sanction under the Joint Stock Companies Arrangement Act, 1870, or any statutory modification thereof, if the company were being

wound up, and the required majority at a meeting of the debenture holders, summoned pursuant to that Act, had agreed thereto. At a meeting of the debenture holders the requisite majority passed extraordinary resolutions, sanctioning a deed under which each debenture holder was to surrender his debentures, which contained a guarantee on the part of the defendant company, in exchange for debentures carrying one-half per cent. more interest, but no guarantee. The plaintiff, a dissentient debenture holder, sought a declaration that the resolutions passed by the majority were binding upon him.

Held, that the transaction was "an arrangement," and by reason of the provision in the trust deed was binding on the plaintiff.—*SHAW v. ROYCE, Warrington, J.*, 188; 1911, 1 Ch. 138.

6. *Debentures—Assignment of book-debts—Priority—Rights of mortgagee—Rents in arrear—Floating charge—Customs "drawbacks"—Notice.*—A company created debenture stock secured by a specific charge on certain of the company's property, and by a floating charge on the general assets. Subsequently the company, in consideration of their bankers continuing to do business with them, assigned to them certain book debts, including rents in arrear, and "drawbacks" owing from the Customs authorities. The rents in arrear were partly payable in respect of property comprised in the specific charge under the debenture trust deed, partly of property not so comprised.

Held, that in respect of the property not comprised in the specific charge, the rents in arrear were assignable in priority to the debenture holders; in respect of the property comprised in the specific charge, the rents in arrear were not so assignable; and that the "drawbacks" were assignable in priority to the debenture holders.—*RE IND, COOPE & CO., Warrington, J.*, 600.

7. *Directors—Articles of association—Construction—Appointment of managing director—Control of management by company in general meeting.*—The directors of a company were empowered by the 99th article of association to appoint a managing director, and by the 113th article to carry on the management of the business of the company, subject to such regulations as might be prescribed by the company in general meeting. The directors appointed one of their number as managing director, contrary to the wishes of a majority of the shareholders, who at a general meeting carried a resolution that another should be appointed.

Held, that the appointment of a managing director was vested in the directors, and was outside the provisions of article 113.—*LOGAN v. DAVIS, Warrington, J.*, 498.

8. *Directors—Principal and agent—Limited company appointed agent to manage estates—Employment of directors of company—Remuneration—Fiduciary relations to principal.*—Directors of a company stand in a fiduciary position only to the company and not to strangers dealing with the company. Consequently when a company is employed as an agent, the directors, if the articles of the company permit, may be remunerated for work done by them in connection with such agency, which would ordinarily have required to be done by a professional man for remuneration.—*BATH v. STANDARD LAND CO., C.A.*, 482; 1911, 1 Ch. 618.

9. *Preference shares—New issue—Validity—"At a meeting"—Sole preference shareholder.*—Although in the ordinary sense of that word a single individual cannot constitute "a meeting," the context may show the word to be used in an unusual sense and in such a way as to include the formal consent of the sole member of the class, the consent of which is required to be obtained "at a meeting."

*Sharpe v. Davies* (2 Q. B. D. 36) and *Re Sanitary Carbon Co.* (1877, W. N. 223) commented upon.—*EAST v. BENNETT, Warrington, J.*, 92; 1911, 1 Ch. 163.

10. *Prospectus—Companies (Consolidation) Act, 1908 (8 Ed. 7, c. 69), s. 81, ss. 1 (d)—Second or subsequent prospectus—Omission to mention previous offer—Remedy for non-compliance—Claim to rescind—Liability of directors.*—In the event of a prospectus issued by or on behalf of a company upon a second or subsequent offer of shares omitting to state the amount offered for subscription on each previous allotment made within the two preceding years, or the amount actually allotted, or the amount, if any, paid on the shares so allotted, the remedy open to a person who has taken shares upon the faith of such prospectus is not rescission, but an action for damages against the directors or other persons responsible for the prospectus.

*Re Wimbledon Olympia (Limited)* (1910, 1 Ch. 630) followed.—*RE SOUTH OF ENGLAND NATURAL GAS AND PETROLEUM CO., Swinfen Eady, J.*, 442; 1911, 1 Ch. 573.

11. *Reduction of capital—Paying off shareholders—Issue of debentures—Scheme—Confirmation—Jurisdiction—Costs of dissentient shareholder—Companies (Consolidation) Act, 1908 (8 Ed. 7, c. 69), s. 46.*—The court will sanction a scheme for reduction



of capital of a company, even though it involves the raising by other means the very money which is required for bringing about the reduction.

The Court may make it a term of the confirmation that the costs of a dissentient shareholder shall be provided for by the company.—*RE THOMAS DE LA RUE & Co., LIMITED, Eve, J.*, 715.

12. *Registration of charge—Companies (Consolidation) Act, 1908* (8 Ed. 7, c. 69) s. 93, sub-section 1 (e)—*Charge on book debts—Reinsurance contract—Non-registration*.—On the 5th of May, 1909, a reinsurance contract was entered into between the Law Car and General Insurance Corporation (reinsurers), the applicants (reinsured), and a third party. The contract contained elaborate provisions for the payment of premiums and recoupment of losses and claims under which no premiums were payable direct to the reinsurers, but the aggregate premiums, less the aggregate losses and claims, were made payable to the third party, who was to pay them into a joint account. The current balances to the credit of the joint account were to be held on trust to recoup the reinsured losses and claims. No part of the balance was payable to the reinsurers until 1913, when the actual profit for the year 1910 was to be ascertained and paid to the reinsurers, less a sum held in reserve to provide for unascertained liabilities, and not paid over until all risks had run off. The liquidator of the Law Car Corporation contended that the contract was a charge on book debts of the Corporation within section 93, sub-section 1 (e), and, not having been registered, was void against him.

Held, that the contract on its true construction created no charge on the book debts, and therefore did not require registration.—*RE LAW CAR AND GENERAL INSURANCE CORPORATION, Swinfen Eady, J.*, 407.

13. *Winding up—Unrealised assets—Profits*.—A company at the date of its winding up was possessed of certain debentures to which no value had been attributed in the balance sheets. These debentures were subsequently realised by the liquidator in the winding-up.

Held, that the entire proceeds realized should be treated as undrawn profits arising from the company's business.—*RE SPANISH PROSPECTING COMPANY, C.A.*, 63; 1911, 1 Ch. 92.

14. *Winding up by the court—Jurisdiction of county court where registered office not situate—Companies (Consolidation) Act, 1908* (8 Ed. 7, c. 69), s. 131 (1), (3), (5), (7), and (8).—A county court judge made an order for winding-up a company. It appeared that although the assets, or some of them, of the company were within the jurisdiction of the county court, the registered office of the company was not situated within the territorial jurisdiction of the county court. It was contended that under these circumstances the county court judge had no jurisdiction to entertain the petition.

Held, that the county court judge had jurisdiction to entertain the petition.

But the court held that the facts of the case did not bring it within section 129 of the Companies (Consolidation) Act, 1908, and that therefore the order should not have been made.—*RE SOUTHSEA GARAGE, K.B.D.*, 314.

See also *Friendly Society*.

#### CONFLICT OF LAWS:—

1. *Domicil—General power of appointment—Will*.—A British subject, who had married a Dutchman, and acquired a Dutch domicil, made a will which was admitted to probate in England, by which she intended to exercise a general power of appointment in favour of her husband.

Held, that the will operated as a complete exercise of the power in favour of the husband, notwithstanding certain limitations imposed by Dutch law on testamentary disposition.—*RE PRICE, LAWFORD v. PRICE, Parker, J.*, 385.

2. *Domicil—Wife living apart from her husband—No judicial separation—Right to acquire a separate domicil—Scotch law—Married Women's Property (Scotland) Act, 1881* (44 & 45 Vict. c. 21), ss. 6, 7, 8.—*Jus relictæ and legitimæ—Exclusion by ante-nuptial contract—Wife's separate estate*.—A married woman is incapable of acquiring a domicil separate from that of her husband, where there has not been any decree of judicial separation or divorce *a mensa et thoro*, except, possibly, where the husband has deserted his wife, and abjured the realm or committed felony and been transported. The fact that she has been judicially declared to be entitled to obtain a judicial separation is not sufficient to render her capable of acquiring a separate domicil if no decree has actually been obtained.—*RE MACKENZIE, MACKENZIE v. EDWARDS-MOSS, Swinfen Eady, J.*, 406; 1911, 1 Ch. 578.

#### CONTRACT:—

1. *Agreement to do that which may lead to a breach of the peace—Agreement to take criminal proceedings before a magistrate*

*for an assault never committed—Agreement, as being contrary to public policy, illegal and unenforceable*.—An agreement to do certain acts which involved proceedings being taken before a magistrate against a person for an assault that the parties knew had not been committed, solely by way of advertisement, is illegal and unenforceable as being contrary to public policy.

An agreement to do certain acts that may in fact result in a breach of the peace is not necessarily illegal and unenforceable as being contrary to public policy.—*DANN v. CURZON, K.B.D.*, 189.

2. *Construction—Mistake—Falsa demonstratio—“About four years”—Estoppel—Admissibility of evidence—Notice*.—The appellant agreed to sell his interest in certain leasehold premises to the respondent, the premium to be paid by the latter to the former being at £15 a year for “each and every year of the existing term” of a certain underlease held by the appellant of other business premises, which term the appellant, by a mistake, but in perfect good faith, told the respondent was “about four years.” The appellant, the mistake being discovered, claimed that the premium should be £105, as the lease of the other premises was not “about four years,” but seven years unexpired.

Held, that the words “about four years” were dominant words and were not inserted in the agreement merely as a statement of belief which the respondent was not entitled to rely on.—*WATKINSON v. WILSON, H.L.*, 617.

3. *Construction—Uncertainty—Agreement to give “first option” of purchasing premises*.—The plaintiffs, the freeholders of certain property, entered into an agreement with the defendants to give them the “first option” of purchasing any premises that might be designated for dairy purposes on the said property.

Held, that this agreement was void through uncertainty as to the intention of the parties as to the meaning of the words “first option.”—*MANCHESTER SHIP CANAL CO. v. MANCHESTER RACE-COURSE CO.* (1900, 2 Ch. 352; 1901; 2, Ch. 37) distinguished.—*RYAN v. THOMAS, Warrington, J.*, 364.

4. *Covenant to repair drain—Lapse of time—Acquiescence—Obstruction by covenantee—Abandonment*.—By an agreement made in the year 1788, a canal company undertook to make a drain or culvert and ditch to drain the garden and meadow of Worcester College, and to maintain and keep in good repair the said culvert, and to maintain, repair, scour, and cleanse the ditch, which ditch and culvert were subsequently constructed. In 1843 the College executed other works for the purposes of draining the meadow, and after 1851 at no time called on the canal company to fulfil their obligations. In 1901 the College caused certain works to be executed which completely blocked the culvert. In 1909 the College sought a declaration that the canal company were liable under the agreement.

Held, that the College, by their own action, had rendered the performance of the covenant impossible, and had thereby abandoned their rights thereunder.—*WORCESTER COLLEGE, OXFORD v. OXFORD CANAL NAVIGATION, Joyce, J.*, 704.

5. *Restraint of trade—Construction*.—B, a chimney-sweep, entered into an agreement for his employment by a company engaged in the business of chimney sweeping which contained the following undertaking:—“That he will give the whole of his time and services to the company, will not undertake any work or orders of any kind except for the company and in their name and on their behalf, nor carry on or be concerned in carrying on the business of a chimney-sweep either by himself or in conjunction with any other person or persons now or any time within a radius of three miles of the above-mentioned station.” After leaving the employment of the company, B. was employed as a servant by a chimney-sweep competing with the company within the district specified in the clause.

Held, that the clause did not apply to the engagement of B. as a servant.

*Semble, Geo. Hill & Co v. Hill* (1886, 55 L. T. 769) differed from —*RAMONEUR & Co. v. BRIXEY, K.B.D.*, 480.

6. *Sale of house—Commission—House put into hands of an agent—Sale by owner—Person willing to purchase found by agent*.

—Unless there is a specific agreement to the contrary, the putting of a house into the hands of an agent for sale does not prevent the owner of the house from selling it himself to a person not introduced by the agent, or from selling it through a different agent. Accordingly, where a house is put into the hands of an agent for sale, and the agent finds a person willing to purchase it, but who cannot purchase it because the house has already been sold by the owner, the agent is not entitled to commission.—*BRINSON v. DAVIES, K.B.D.*, 501.

CONVERSION.—See *Administration*.



**COPYRIGHT:—**

1. *Copyright at Common Law—Infringement—Musical composition—Rights of composer after publication—Reproduction—Exclusive performance—Gramophone—Injunction.*—The composer of the music of a song has no remedy at common law, after publication, against a person who, without authorisation, copies that music on to gramophone records and publishes and sells such records.

*Borsey v. Whight* (48 W. R. 228; 1900, 1 Ch. 122) applied.—*MONCKTON v. GRAMOPHONE CO., Joyce, J.* 125.

2. *Drawing—Infringement—Copy on wood-block—Registration—Fine Arts Copyright Act, 1862* (25 & 26 Vict. c. 68), ss. 1, 4.—The plaintiff was the owner of the copyright of a drawing, the principal features of which the defendant had copied on to a wood-block, so that in the reproductions printed therefrom the said features were transposed, and faced the opposite direction.

Held, that the block and reproductions printed therefrom were copies or colourable imitations and infringements of the copyright.

The plaintiff registered himself as co-owner of a copyright with V., who, in fact, had no interest in the copyright. Subsequently he registered himself as sole owner, but entered on the register an assignment to himself of all V.'s interest in the said copyright, whereas V. had in fact no interest.

Held, that the first registration was bad, but that the second was valid, and could sustain an action for infringement.—*WHITEHEAD v. WELLINGTON, Warrington, J.* 272.

**COSTS.—**

1. *Taxation—Order of Court—Non-disclosure of material facts—Order of Court discharged.*—A client of a solicitor who had acted in certain proceedings on behalf of this client and 124 others obtained a common order to tax upon a petition of course, which omitted to state material facts, including the fact that the solicitor's bill of costs in respect of the proceedings had been paid by a third party.

Held, the order must be discharged.—*RE S. (a Solicitor), Warrington J.* 127.

2. *Taxation—Non-contentious business—District Registrar of Manchester—Jurisdiction—Solicitors Act, 1843* (6 & 7 Vict. c. 73), s. 37.—*R. S. C. XXXV. 6a; LXI. 1b; LXV. 26a; LXXI.*—A district registrar is not a "proper officer" of the court within the meaning of section 37 of the Solicitors Act, 1843, to whom a bill of costs for non-contentious business can be referred for taxation, and such bill can only be taxed by a Master of the Supreme Court.

Decision of Court of Appeal, (54 SOLICITORS' JOURNAL, 618) affirmed.—*STEAD v. SMITH, H.L.*, 616.

3. *Taxation—Patent action—Discontinuance with leave of court—Costs of particulars of objections—R. S. C. XXVI. 1, LIIIa 22.*—Ord. 53a, r. 22, of the R. S. C., which provides that the costs of particulars of objections, delivered by the defendant in an action for breach of patent, shall be in the discretion of the taxing master, will be applied to actions discontinued whether with or without the leave of the court.—*BIBBY v. STRACHAN, Joyce J.* 235.

4. *Taxation—Solicitor—Taxation as between solicitor and client—"Party"—R. S. C. LXV. 27, Regulations 39, 41.*—In taxation as between solicitor and client, a solicitor or a firm of solicitors may be a "party" within ord. 65, r. 27, regulations 39 and 41, and may be entitled to a review of taxation in his or their own interests, as, for instance, where he or they have a lien for costs on a fund.—*RE CLARKE'S SETTLEMENT, Joyce, J.* 293.

See also Lands Clauses Act, Mortgage, Solicitor.

**COUNTY COURT:—**

1. *Practice—Judgment debtor—Garnishee summonses issued before the debt and costs became payable—Irregularity—R. S. C. XXIV. 1—County Courts Act, 1888, s. 149.*—The plaintiffs on the 20th of September, 1910, recovered judgment in the county court for £14 8s. 10d., with costs, payable in fourteen days—namely, on or before the 4th of October. On the 29th of September the costs were taxed at £4 2s. 10d., and the total judgment debt became £18 11s. 8d., payable on the 13th of October. On the 29th of September garnishee summonses were issued against certain persons upon the usual affidavits, alleging that they were indebted to the judgment debtor. These summonses were returnable on the 18th of October. The judgment debtor applied to the county court to have the garnishee proceedings set aside on the ground of irregularity, the same having been issued before the debt and costs became due and payable.

Held, that the defendant was entitled to the order he asked for, as there could have been no default on his part in satisfying the

judgment when the summonses were issued, as that on that date the time allowed him within which to pay had not elapsed.

*Per Vaughan Williams, L.J.*—The mere fact that garnishee summonses are not mentioned in section 149 of the County Courts Act, 1888, which deals with executions, does not preclude the court from treating them as a species of execution. Therefore a judgment creditor ought not to be allowed to take out a garnishee summons or get an order thereon if the state of things is such that he could not issue a *fi. fa.*—*WHITE v. STENNING, C.A.* 441.

2. *Practice—Parties—Joinder of defendants to counterclaim—Raising of question between defendant and plaintiff "along with" any other person—Alternative claims—County Court Rules, 1903, o. 2, r. 22.*—If A. sue B. in the county court, and B. counterclaims against A., B. cannot add C. as another defendant to his counterclaim, if his claim against C. is alternative to his claim against A.; for in that case his counterclaim against A. does not raise a question between himself and the plaintiff, "along with any other person"—namely, C., within the meaning of ord. 10, r. 22, of the County Court Rules, 1903 and 1904.—*LOWTHER v. TIMES COLD STORAGE CO., K.B.D.*, 442, 1911, 2 K.B. 100.

3. *Security for costs—Jurisdiction—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 66—*Companies (Consolidation) Act* (8 Ed. 7, c. 69), s. 278.—Where an action of tort has been remitted to the county court under section 66 of the County Court Act, 1888, on the plaintiffs, a limited liability company, failing to give full security for the defendants' costs or to satisfy a judge of the High Court that their cause of action is fit to be prosecuted in the High Court, the county court judge is not deprived of his jurisdiction to make an order for the security of the defendant's costs under section 278 of the Companies (Consolidation) Act, 1908, as by section 66 (*ubi sup.*), the remitted action and all the proceedings therein are to be tried and taken in the county court as if the action had originally been commenced therein.—*PLASYCOED COLLIERIES v. PARTRIDGE & CO., K.B.D.* 481.

See also Practice.

**COVENANT:—**

1. *Joint and several covenants—Lessee covenanting with himself and others—Invalidity of covenants—Covenants running with land—Assignees not bound.*—A covenant by one with himself and others jointly is void. Therefore, if a lessee purports to covenant with himself and other lessors jointly, although the covenant if valid is of such a kind as to run with the land, yet an assignee of the term is not bound in law or in equity.

*Ellis v. Kerr* (54 SOLICITORS' JOURNAL, 307; 1910, 1 Ch. 529) followed.—*NAPIER v. WILLIAMS, Warrington, J.* 235; 1911, 1 Ch. 361.

2. *Restrictive covenant—Covenant to keep windows closed—Covenant to run with land—Flat—Tenant—Notice—Accepting less than forty years' title—Injunction.*—A builder, L., who had entered into an agreement with a landlord by which a lease of certain property was to be granted him on the completion of certain buildings thereon, covenanted with B., the owner of adjoining land, that the windows in the said buildings facing B.'s land should be obscured and fixed. A block of flats was erected, and a lease granted to L., by whom it was subsequently mortgaged and the equity of redemption released. The defendant became tenant of one of the flats and opened one of the fixed windows.

Held, that the covenant was a restrictive covenant, binding on the leasehold interest, of which the defendant had constructive notice, and could be enforced by injunction.—*ABBEY v. GUTTERES, Warrington, J.* 364.

3. *Restrictive covenant—Surrender of lease—Grant of new lease—Lessee taking with notice of original restrictive covenants.*—A person carried on the business of a general butcher at No. 170, H—Street, and the business of a pork butcher in the same street at No. 137, occupied by him under a lease which prohibited the carrying on any noisy or offensive trade other than that of a pork butcher. In 1908 he sold his business at No. 170, covenanting with the purchaser that he would not sell or deal in flesh meat at the premises at No. 137, where he carried on the pork butcher's business; also that he would use his best endeavours to promote the business, and secure the custom to the purchaser, and would not open a similar business within three miles. In 1909 the vendor surrendered the lease of No. 137 to the landlord, who thereupon granted the son of the vendor a new lease for a longer term, in which the word "pork" before the word "butcher" was struck out, thus giving the son, as the new lessee, the right to carry on at No. 137 a general butcher's business. Previous to such surrender the son knew of the restrictive covenant under which his father had carried on the business at No. 137. The vendor closed the shop, which, within a few days, was opened by the son as a general butcher's shop.

Held, that an injunction granted at the trial by Scrutton, J., restraining the son from carrying on a general butcher's business at No. 137, H—Street, ought not to have been granted, as the son was not bound to observe the restrictive covenants existing between the vendor and purchaser, before the former surrendered the lease to the landlord, and was at liberty, therefore, to carry on such a business at the premises, as was compatible with the terms of the lease.

Decision of Scrutton, J. (27 Times L. R. 157, 104 L. T. 140), reversed.—*WILKES v. SPOONER, C.A.* 479.

See also Landlord and Tenant, Settled Land.

#### CRIMINAL LAW:—

1. Arraignment—Verdict of unfit to plead and take trial—Insanity—Detention during His Majesty's pleasure—Appeal—Criminal Appeal Act, 1907 (7 Ed. 7, c. 23).—No appeal or application for leave to appeal lies to the Court of Criminal Appeal from the verdict of a jury upon the issue that a prisoner against whom a true bill has been found is on arraignment insane and unfit to plead and take his trial.—*REX v. LARKINS, C.C.A.* 501.

2. Autrefois acquit—Manslaughter—Plea of not guilty—Subsequent plea of autrefois acquit—Admissibility of.—Where on an indictment for manslaughter the prisoner has pleaded not guilty, he is not entitled to advance subsequently the plea of *autrefois acquit*.

Query, whether, where a prisoner is indicted for murder and also for manslaughter, and the prosecution electing first to offer no evidence on the indictment for murder, the jury, by direction of the judge, acquit the prisoner, he can, on an indictment for manslaughter, obtain his acquittal by pleading *autrefois acquit*.—*REX v. BANKS, C.C.A.*, 727.

3. Charge before justice of causing explosion likely to endanger life—Further proceeding without consent of Attorney-General—Explosive Substances Act, 1883 (46 Vict. c. 3), ss. 2, 7 (1)—No jurisdiction to try—Powers of Court of Criminal Appeal—Criminal Appeal Act, 1907 (7 Ed. 7, c. 23), s. 4 (1).—By the proviso to section 4 (1) of the Criminal Appeal Act, 1907: "The court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred."

Where the court of trial has no jurisdiction to try the appellant, the proviso to section 4 (1) of the Criminal Appeal Act, 1907, is inapplicable. Accordingly, where the appellant had been charged under section 2 of the Explosive Substances Act, 1883, with having unlawfully and maliciously caused an explosion likely to endanger life, before a justice, and contrary to section 7 (1) of that Act further proceedings were taken without the consent of the Attorney-General, so that the appellant was convicted on indictment, it was

Held, that the proviso to section 4 (1) of the Criminal Appeal Act, 1907, was inapplicable.—*REX v. BATES, C.C.A.*, 410; 1911, 1 K. B. 964.

4. Evidence in criminal appeals—Conviction quashed—Alleged inadmissibility of certain evidence—"Point of law of exceptional public importance"—Criminal Appeal Act 1907 (7 Ed. 7, c. 23), s. 1, sub-section 6.—The conviction of two persons, a brother and sister, of incest was quashed by the Criminal Court of Appeal on the ground that there was no direct evidence of actual guilty relationship between the defendants on the dates mentioned in the indictment; and that the inference to be drawn from such evidence as the police offered, although sufficient to have established the guilt of either party in divorce proceedings, was insufficient to support the conviction.

Held, allowing the appeal by the Director of Public Prosecutions, that such evidence had been wrongly rejected.—*DIRECTOR OF PUBLIC PROSECUTIONS v. BALL, H.L.*, 139.

5. Information to court as to prisoner's condition and antecedents after conviction—Procedure—Duty of judge.—Per Lord Alverstone, C.J.: After the conviction of a prisoner there should be given to the judge by the police accurate information as to the prisoner's condition and antecedents, even although legal proof as to the whole of the information may not be available at the moment after conviction. Where the prisoner does not challenge this information the judge can consider it, but where the prisoner challenges any statement and says it is untrue, it is the duty of the judge to inquire into its accuracy, and if the judge considers the matter of such importance that it ought to be proved by legal evidence, to adjourn the case for that purpose, or the judge may properly adopt the course of disregarding altogether the statement that has been challenged.—*REX v. CAMPBELL, C.C.A.*, 273.

6. Prisoner indicted for burglary or for receiving—Verdict of guilty as accessory before the fact or of receiving—Sufficiency

of verdict.—Where a man is indicted for burglary, with a second count in the indictment for receiving, and the jury find him guilty of being an accessory before the fact to the burglary and of receiving, the verdict will stand.

*REX v. Hughes* (1860, Bell's Crown Cases, 242) followed.—*REX v. GOODSPED, C.C.A.*, 273.

7. Probation of offenders—Conviction on indictment—Release on recognizances under Probation of Offenders Act, 1907—Breach of condition of recognizance—Offender brought before court of trial—Power to sentence—Probation of Offenders Act, 1907 (7 Ed. 7, c. 17), ss. 1 (1) (2), 6 (1 to 5)—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 117.—S. was convicted on indictment and was required to enter into recognizances under section 1 (2) of the Probation of Offenders Act, 1907, to appear for sentence when called upon. On S. committing a breach of a condition of the recognizance, he was brought before the court of trial when the point was taken that the court had no power to sentence him.

The Court of Criminal Appeal expressed the opinion that section 6 (5) of the said Act did not apply to the case, but only to cases where a court of summary jurisdiction had acted under section 1 (1) of the Act. But they

Held, that the court where S. was convicted on indictment had, apart from any provision in the said Act, the power to pass sentence on S.

Held, also, that section 117 of the Larceny Act, 1861, d'd not apply to the case.—*REX v. SPRATLING, C.C.A.*, 31; 1911, 1 K. B. 77.

8. Riot—Indictment for—Conviction on, for common assault.—The appellant was convicted of common assault upon an indictment charging him with riot. It appeared, however, that the indictment contained words apt to charge him with assault.

Held, that the appellant could be convicted upon this indictment of a common assault.—*REX v. O'BRIEN, C.C.A.*, 219.

9. Successful appeal—Conviction quashed—Application to Attorney-General for certificate—Appeal to House of Lords—No power to keep successful appellant in custody or to hold him to bail pending application and appeal.—When the Court of Criminal Appeal allows an appeal and quashes the conviction of an appellant, the court has no power to hold the successful appellant to bail or to keep him in custody pending an application to the Attorney-General under section 1 (6) of the Criminal Appeal Act, 1907, for his certificate that the decision of the court involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought to the House of Lords, or if the certificate is granted pending the appeal to the House of Lords.

The Crown having obtained a certificate of the Attorney-General that a decision of the Court of Criminal Appeal, by which two convictions were quashed, was of exceptional public importance, and that it was desirable, in the public interest, that a further appeal should be brought, appealed successfully to the House of Lords. There being no machinery in the Criminal Appeal Act, 1907, for the House of Lords giving effect to their order, the Court of Criminal Appeal, on application made to them by the Crown, expunged from the record of their court the order which had been made, setting aside the verdict of guilty, and entering one of acquittal. Accordingly the convictions stood, and an order was made for the arrest of the defendants.—*REX v. BALL, C.C.A.*, 190.

10. Threatening to murder—No intention to murder—"Threat" sent as bluff to call attention to grievances—"Malice"—Offences against the Person Act, 1861 (24 & 25 Vict. c. 100).—On an indictment under section 16 of the Offences Against the Person Act, 1861, for maliciously sending to M. a letter threatening to murder R., the jury found a special verdict that the defendant wrote the letter with the object of pressing M., who was a member of the House of Commons, and his friends to support certain claims he had made against the Home Secretary and the police authorities; that he did not intend to murder R., and that the "threat" was bluff, and made in order to call attention to his grievances. The judge at the trial had directed the jury that the word "malicious" in the section implied the doing of that which a person had no right to do, and the doing of it in order to secure some object by means which were improper.

The Court of Criminal Appeal construed this verdict as a finding that the letter did contain a threat to murder, that the defendant did not intend to murder R., but that the threat was "bluff" made in order to call attention to his grievances, and they held that the verdict did not negative "malice," and that the judge at the trial acted rightly in entering a verdict of guilty.—*REX v. SYME, C.C.A.*, 704.

See also Justices, Motor Car.



**DAMAGES:—**

"Stage Beauty Competition"—Three years' paid engagements offered to those selected—Notice to attend for final selection not given plaintiff in reasonable time—Engagements all filled up—Whether damages were capable of assessment.—The defendant, an actor-manager, offered by advertisements in a daily newspaper to give to fifty ladies selected by the votes of the readers of the newspaper a chance of presenting themselves before him, so that twelve of them might be chosen by him for engagements at varying remuneration, which he promised to give them in one or other of his theatrical companies. The plaintiff was one of the fifty selected ladies, but, as the jury found, she was not given a reasonable opportunity of presenting herself afterwards for the final selection by the defendant, and she claimed damages, which the jury assessed at £100.

Held, affirming the decision of Pickford, J., entering judgment for the plaintiff in accordance with the verdict, reported 27 T. L. R. 244, that it could not be said that the damages in such circumstances were incapable of estimation, and therefore the plaintiff was entitled to her verdict.—*CHAPLIN v. HICKS, C.A.*, 580.

**DECEASED WIFE'S SISTER ACT:—**

Deceased wife's sister, marriage with—Parties dead before passing of Act—Children legitimate—Spes Successionis to property not interest in expectancy—Deceased Wife's Sister Marriage Act, 1907 (7 Ed. 7, c. 47), ss. 1, 2.—G., who had married his deceased wife's sister, died before the passing of the Deceased Wife's Sister Marriage Act, 1907, leaving children by his first marriage and one child by his second. T. G., a child of the first marriage, died intestate in 1911.

Held, that the child of the second marriage was entitled to rank with the children of the first as next of kin to the deceased.—*RE GREEN, G. v. MEINALL, Warrington, J.*, 552.

**DEED OF ARRANGEMENT:—**

Proof—Double proof—Proof by creditor—Proof by surety for deficiency—Interest.—Under a deed of arrangement containing the usual provisions a surety is not entitled to prove for the balance remaining due after the creditor has proved and received a dividend in respect of the debt, but he is entitled to prove for interest on such balance.—*RE PYKE, DAVIS v. JEFFREYS, Eve, J.*, 109.

See also Bankruptcy.

**DISCOVERY.—See Practice.**

**DISTRESS.—See Landlord and Tenant.**

**DIVORCE:—**

1. *Adultery by wife—Condonation by husband—Subsequent desertion by wife—Matrimonial Causes Act (47 and 48 Vict., c. 68, sec. 5), 1884—Decree of restitution of conjugal rights obtained by husband—Effect of decree—Revival of adultery.*—Non-compliance with a decree for the restitution of conjugal rights is statutory desertion, and will revive adultery previously condoned.—*PRICE v. PRICE AND BROWN, P.D.*, 689.

2. *Decree nisi—Application to rescind—Costs of petition to be paid by co-respondent.*—The court has power to order a co-respondent to pay the taxed costs of a petition, notwithstanding that the decree nisi pronounced in the suit is rescinded on the application of the petitioner.—*QUARTERMAINE v. QUARTERMAINE, P.D.*, 522.

3. *Discovery—Petition—Notes made by medical man—Application for discovery—Refusal.*—Where a husband, respondent in a divorce suit, asked for discovery of notes made by a medical man who had attended the wife-petitioner, the court refused to make an order.—*D. v. D., P.D.*, 331.

4. *Judicial separation—Petition by wife—Application to dismiss—Solicitor changed during proceedings—Costs incurred—Bill to be carried in for taxation—Proceedings in suit meanwhile stayed—Divorce Rules 154 and 155.*—On being satisfied that a solicitor, though not still on the record, had been properly instructed by a wife-petitioner, and had acted reasonably, the court stayed proceedings by the husband for the dismissal of the suit in order to give the solicitor an opportunity to carry in his bill of costs for taxation.—*JINKS v. JINKS, P.D.*, 366; 1911, P. 120.

5. *Judicial separation—Wife-petitioner convicted and sentenced for fraud—Application for permanent alimony—Inquiry ordered.*—Notwithstanding the fact that a wife, who had obtained a decree of judicial separation, had been convicted of fraud both prior and subsequent to the marriage, the court declined to say that she was not entitled to alimony, and ordered an inquiry, but observed that her conduct might be considered.—*L. v. L., P.D.*, 386.

6. *Nullity—Permanent maintenance—Dum sola clause—Reduced amount on remarriage—Matrimonial Causes Act, 1907 (7 Ed. 7*

*c. 12).*—The court has power in nullity suits to fix permanent maintenance *dum sola*, and to reduce amount on remarriage.—*MARIGOLD v. MARIGOLD, P.D.*, 387.

7. *Nullity—Refusal to consummate or to cohabit—Inference of incapacity.*—Where a wife refused either to consummate the marriage or to cohabit with her husband, the court inferred incapacity on her part.—*F. v. F. OTHERWISE P., P.D.* 482.

8. *Particulars of charges in petition—Explanatory affidavit—Practice.*—An explanatory affidavit in lieu of particulars of charges in a petition for divorce should be made by the solicitor who has seen the witnesses.—*C. v. C., P.D.*, 141.

9. *Practice—Wife's costs—Husband's petition—Dismissal of petition with costs—Non-payment by husband—Second petition by husband—Stay of proceedings until payment.*—A husband who has brought an unsuccessful petition for divorce against his wife will not be allowed to proceed with a second petition until he has paid the wife's costs of the first petition.—*SANDERS v. SANDERS, C.A.*, 312; 1911, P. 101.

10. *Restitution—Wife's petition—Justification by husband—Alleged desertion.*—It is not a sufficient answer by a husband to a suit for restitution of conjugal rights that his wife had left the home for a less period than two years, had neglected her children, and that the respondent's health had suffered in consequence of her conduct.—*WEST v. WEST, P.D.*, 48.

11. *Suit by husband—Co-respondent a minor—Order for costs against him.*—Notwithstanding that he was a minor, a co-respondent, who had not appeared to a citation by a husband seeking a divorce, was condemned in the costs of the suit.—*BROCKELBANK v. BROCKELBANK, P.D.*, 717.

12. *Summary Jurisdiction (Married Women) Act, 1895, ss. 4, 5—Desertion—Order—Non-cohabitation clause—Application by husband to strike out clause—Power of court to vary order.*—Where a husband had been adjudged by justices to be guilty of desertion and ordered to pay a weekly sum to wife, and a non-cohabitation clause had been inserted in the order by virtue of section 5 of the Summary Jurisdiction (Married Women) Act, 1895, it was

Held, by the Divisional Court, on the application of the husband, that it had power to vary the order by striking out the clause.—*DUNNING v. DUNNING, P.D.*, 650.

13. *Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), ss. 4 and 11—First application for order by wife dismissed—Second application granted—Appeal by husband—Res judicata.*—A wife is not entitled to have a second summons issued and heard for the same cause of complaint under the Summary Jurisdiction (Married Women) Act, 1895, where upon a former summons the case has been heard and the summons dismissed.—*STOKES v. STOKES, P.D.*, 690.

14. *Variation of settlements—Decree nisi—Petition for variation filed before decree absolute—Time for answering—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5.*—A petition to vary a settlement under the Matrimonial Causes Act, 1859, may be filed before a decree absolute has been made, but the court has no jurisdiction to entertain the petition till after the decree absolute. Consequently, till the decree absolute has been made, a respondent cannot be compelled to answer the petition.—*CLARKE v. CLARKE AND LINDSAY, C.A.*, 535.

15. *Wife's petition—Cruelty—Pleading—Onus of rebuttal on husband.*—A wife establishes *prima facie* a charge of legal cruelty against her husband if she proves that, in fact, he has communicated to her a venereal disease, and that she is a guiltless woman.—*B. v. B., P.D.*, 462.

16. *Wife's petition—Cruelty and adultery—Condonation—Subsequent cruelty—Revival of previous cruelty and adultery—Pleadings—Practice.*—A subsequent matrimonial offence will revive offences previously condoned. *Quære* whether it is necessary to plead the revival.—*BRADDOCK v. BRADDOCK, P.D.*, 79.

**DOMICIL.—See Conflict of Laws.**

**EASEMENT:—**

*Reservation of right of way—Easement in futuro—Covenant to "make and provide" crossing over tramway—Time indefinite—Interest in land—Perpetuity—Personal covenant—Implied stipulation—Encumbrance.*—In 1889 the defendant conveyed to the plaintiff's predecessors in title a strip of land for a tramway, the deed containing a reservation by the vendors of the right to cross the line at two points to be selected by them, and a covenant by the purchasers to "make and provide" crossings at the points selected by the vendor on notice being given. In 1892 the defendants gave notice of one point selected, and from that date crossed the line there from time to time, but no crossing was ever



constructed. In 1910 the plaintiff obstructed the crossing, and sought to restrain the defendant from using it.

Held, that the reservation was void as breaking the rule against perpetuities, but that the covenant contained an implied personal obligation not to interfere with the defendant's crossing, which obligation became fixed and attached to the land as soon as the point was selected, and that the plaintiff had notice thereof, and was bound thereby.—*SHARPE v. DURRANT, Warrington, J.*, 423.

#### EDUCATION :—

1. *Provided school—Conveyance of children to and from school—Contract with jobmaster—Injury to child—Negligence of independent contractor—Liability of Education Authority—Elementary Education Acts, 1870, s. 74 ;—1876, ss. 4, 11, 12 ;—1902, s. 23 (i).*—A county council authorized the providing of a vehicle to bring children to school from a hamlet outside the two-mile radius from the school. The plaintiff, a child nearly thirteen years of age, who lived with her parents within the two-mile radius, was invited to use the conveyance by the school attendance officer. While being so conveyed she was injured partly (the jury found) through the negligence of the council in not providing a conductor or adult attendant to take care of the children while getting in and out of the vehicle, and partly by the negligence of the jobmaster, who had restarted his horses while the plaintiff was on the steps at the rear of the wagonette from which she was preparing to alight. The jury also found that there was no contributory negligence on the part of the child, and that the child was conveyed with the consent of the county council.

Held, reversing the decision of the Court of Appeal (Vaughan Williams, L.J., dissenting), that although the defendants were under no obligation to provide a vehicle at all for bringing up school children, nevertheless, having elected to provide a vehicle, there was an obligation upon them to see that the vehicle provided was suitable and safe for that purpose. The plaintiff alleged that this wagonette, which was high and had an awkward double step at the back and had lost the end rail, was not such a vehicle and was unsafe unless some adult person went with it, beside the driver, to see the children in and out in safety. The question whether sending the vehicle with the driver only in charge was or was not negligence on the part of the defendants was a question for the jury. They had found that it was negligence, and there being evidence on which they could so hold, the plaintiff was entitled to the damages that had been awarded her at the trial.

Held, also, that the inviting by the school attendance officer of the plaintiff to use the vehicle was an act within the scope of his authority, and precluded the defendants pleading that the plaintiff was a mere volunteer.

Decision of the Court of Appeal (reported 8 L.G.R. 710 ; 74 J.P. 305) reversed.—*SHRIMPTON v. HERTFORDSHIRE COUNTY COUNCIL, H.L.*, 270.

2. *School—Efficiency—Salaries of teachers—Local Education Authority—Right to differentiate between salaries—Education Act, 1902, ss. 7 (1), (3), 16.*—A local education authority has no power under the Education Act, 1902, to differentiate between provided and non-provided schools as such in regard to the amount of the salaries to be paid to the teachers.

Decision of Court of Appeal (sub nom. *Re v. Board of Education*, 1910, 2 K. B. 165, 75 L. J. K. B. 595) affirmed.—*BOARD OF EDUCATION v. RICE, H.L.*, 440 ; 1911, A. C. 179.

And see *School*.

#### ELECTION LAW :—

1. *Parliamentary registration appeal—Evidence—Prima facie proof of ground of objection—Evidence in support of claim—Legal admissibility—Right of appeal from barrister.*—Where prima facie proof of objection had been given to the name of a person being retained on the occupation list, on the ground that he was a lodger and not an inhabitant occupier, a revising barrister admitted the evidence of a canvasser employed by the town clerk, who, reading from his notes, deposed that the landlady of the premises had told him that the rooms where the voter resided were let to him unfurnished ; that he had separate and exclusive occupation of them, and that she performed no services whatsoever for him, and exercised no control over the premises. Neither the landlady nor the voter was present ; but a party registration agent stated that he had authority to appear for the voter. On the evidence admitted, the barrister decided that the case came within the decision of *Kent v. Pittall No. 1* (1906, 1 K. B. 60), and that the prima facie proof of the ground of objection was rebutted, and he retained the name of the voter on the list.

Held (1) that as it was clear the barrister could not have purported to admit this evidence as being legally admissible, and as his decision was one of law, or of mixed fact and law, an appeal lay to the High Court, notwithstanding section 65 of the Parliamentary Registration Act, 1843. (2) That when a ground of

objection has been *prima facie* established, evidence put forward in support of the claim must be legally admissible. Accordingly, as the evidence admitted was not legally admissible, but mere hearsay, the appeal would be allowed, and the name of the voter struck off the list.—*ASTELL v. BARRETT, K.B.D.*, 237.

2. *Registration of electors—Household qualification—"Inhabitant occupier" or "lodger"—Landlord living in part of house and paying rates for the whole—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 3—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), ss. 5, 28 (10).*—Where the landlord resides in part of a house let off in tenements and pays the rates for the whole of the premises the occupiers in the Occupiers' List of tenements so let are not qualified to be placed in Division 1 of the Parliamentary Voters for the borough, as they have not, as required by section 3 of the Act of 1867, during the time of such occupation been rated as an ordinary occupier in respect of the premises so occupied, to all rates (if any) made for the relief of the poor, nor *bona fide* paid an equal amount in the pound to that payable by other ordinary occupiers in respect of all poor rates.

So held, affirming, but on a different ground, a decision of the Divisional Court (reported 9 L. G. R. 27, 27 T. L. R. 79).—*KENT v. FITTALL (No. 4), C.A.*, 687.

3. *Registration—Interest as a freeholder—Occupation—Separate dwelling-house—Representation of the People Act, 1832, s. 24.*—A freeholder in a borough who occupies the upper part of a house erected on his freehold is not in occupation of the lower part so as to be prohibited from voting for the county as a freeholder.—*DOUGLAS v. SANDERSON, K.B.D.*, 94 ; 1911, 1 K. B. 166.

#### ESTOPPEL :—

*Claim for rent under agreement by specially-indorsed writ—Admission by defendant—Claim for further rents under agreement—Defence of no consideration—Estoppel.*—Where a defendant, when sued under order 14 by a specially-indorsed writ for the amount of certain rents due to the plaintiff from the defendant under an agreement, has filed an affidavit admitting she owes money for rents due under the agreement, if sued subsequently for further rents under the same agreement, she is estopped from setting up the defence that there was no consideration for the agreement, and this is so although there was no specific allegation in the statement of claim on the specially-indorsed writ that there was consideration for the agreement.—*COOKE v. RICKMAN, K.B.D.*, 668.

See also *Principal and Agent*.

#### EXECUTOR :—

1. *Administration—Legacies—Appropriation by executor to himself as legatee—Ademption.*—An executor cannot appropriate, in or towards satisfaction of a pecuniary legacy bequeathed to himself, securities having no exact value.—*RE BYTHWAY, Joyce, J.*, 235.

2. *Express trustee—Statute of limitations—Declaration of trust—Ear-marking entries.*—Executors who are not also in terms appointed trustees, but who have duties imposed upon them, not as executors but as trustees, hold the residue as soon as it has been ascertained, and as soon as their duties as executors have been performed as express trustees within the meaning of the Statute of Limitations.

Executors, although not trustees under the provisions of the will by which they are appointed, may become express trustees by reason of entries in their accounts ear-marking certain sums as held for or on account of the persons interested.—*RE GOMPERTZ, Warrington, J.*, 76.

3. *Pledge of personalty—No limit of time—Executor functus officio.*—An executor, or one of several executors, may validly pledge any part of the testator's personal estate at any distance of time from the testator's death, and the pledgee is under no obligation to make inquiries.—*SOLOMON v. ATTENBOROUGH, Joyce, J.*, 535 ; 1911, 2 Ch. 159.

4. *Vendor and purchaser—Sale of real estate by executors—Infant executor—Appointing person to convey—Trustee Act, 1893, s. 33—Land Transfer Act, 1897, s. 2 (2).*—On a sale of real estate by executors where one of them is an infant, the court will make an order appointing a person to convey on behalf of the infant executor. But the court will not make an order as to prospective sales.—*RE LEWIS'S TRUSTS, Eve, J.*, 140.

#### FISHERY :—

1. *Prescription in a que estate—Profit à prendre in alieno solo—Presumption of legal origin.*—The plaintiffs were the riparian owners on opposite sides of the river Wye, and they claimed a declaration that they were entitled to stop, by injunction, the

defendants, fishermen, who fished from boats with nets for salmon and other fish, which they sold in the market. The defendants set up a prescriptive right to a free fishery or common of fishery alleged to be vested in the freehold tenants of a certain manor whose freeholds were situated in any of the parishes adjoining the river, and they proved that they and their predecessors in title, as such freeholders in exercise of such alleged right, had for three centuries past exercised the right to catch and sell fish. The Court of Appeal, reversing Neville, J., held that a prescription in a *que estate for a profit à prendre in alieno solo*, without stint and for commercial purposes was unknown in law, and that the court could not presume a legal origin for the alleged right.

Held, by the majority of the House, that the order appealed from was right.

Decision of Court of Appeal (1908, 2 Ch. 397) affirmed.—HARRIS v. LORD CHESTERFIELD, *H.L.*, 686.

2. *Several fishery—Navigable non-tidal lake—Public user—Prescription—Evidence.*—The crown is not, of common right, entitled to the soil or waters of an inland non-tidal lake, nor can any right exist in the public to fish in the waters of such a lake. A claim was made for a several eel fishery, extending over the whole of Lough Neagh. The claim was founded on a grant by Charles II., dated 1661, and upon certain leases made by persons claiming under the grant, the payment of rent under the grant and other documentary evidence. The title of the Crown was established to the satisfaction of the court by certain inquisitions held prior to the grant. On behalf of the defendants, who were fishermen, evidence was given of continuous fishing by the public from time immemorial.

Held (Lord Loreburn, C., Lord Shaw, and Lord Robson, *dissentiente*), that the plaintiffs' documentary title to a several fishery in the lough being in point of law coercive, and their user under the title being the only reasonable and profitable user, the plaintiffs' title was not displaced by the evidence of long-continued fishing by the public.

Decision of Court of Appeal (Ireland) affirming a judgment of Ross, J. (1909, 1 Ir. R. 237), by a majority affirmed.—JOHNSTON v. O'NEILL, *H.L.*, 686.

#### FRIENDLY SOCIETY:—

*Conversion into limited company—Alteration of Memorandum—Enlarging objects of company—Companies (Converted Societies) Act 1910 (10 Ed. 7 and 1 Gep. 5), c. 23.*—The court will in a proper case sanction the extension of the objects of a friendly society which has been converted into a limited company, though the business carried on by the society before conversion included insurance business.—*RE THE ROYAL LONDON MUTUAL ASSURANCE SOCIETY, Eve, J.*, 46.

#### HACKNEY CARRIAGE:—

*Proprietors' licence in metropolis—Discretion of Commissioner of Police to refuse—Motor-cab held on hire-purchase system—Metropolitan Public Carriage Act, 1869 (32 & 33 Vict. c. 115), ss. 6, 7.*—The Commissioner of Police may not refuse a proprietor's licence for a motor-cab on the ground that he has made a rule not to grant the licence when the applicant holds his cab upon the hire-purchase system.—*REX v. COMMISSIONER OF POLICE, K.B.D.*, 726.

#### HIGHWAY:—

1. *Extraordinary traffic—Extraordinary expenses—Slight damage to roads—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23—Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 12.*—Held, that the defendants were entitled to judgment as the plaintiffs had not established that the traffic, which they alleged was "extraordinary traffic," and for which they claimed to recover expenses from the defendants under section 23 of the Highways and Locomotives (Amendment) Act, 1878, as amended by section 12 of the Locomotives Act, 1898, had in fact substantially increased the average cost of the roads within their district during the year in question so as to place an unfair burden on the ratepayers.

Decision of Channel, J. (1911, 1 K. B. 734), affirmed.—BILLETICAY DISTRICT COUNCIL v. POPLAR UNION, *C.A.*, 647; 1911, 1 K. B. 735.

2. *Repair of highway—Liability of occupier—Ratione Tenuræ—Agreement with local authority to take over liability—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 25—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 148.*—A rural district council may, by virtue of the powers conferred upon it by the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 25, enter into an agreement with the owners and occupiers of land whereon are roads repairable by the occupier, *ratione tenuræ*, to take upon itself the liability for the repair of the said roads in perpetuity.—

*RE EARL OF STAMFORD AND WARRINGTON'S SETTLED ESTATES, Warrington, J.*, 483; 1911, 1 Ch. 648.

#### HUSBAND AND WIFE:—

1. *Promissory notes by husband and wife—Nature of transaction not explained to wife—Duress—Bills of Exchange Act, 1882 s. 30.*—Where a wife becomes surety for her husband in a transaction under which she is to get an indirect advantage, the nature of the transaction and what she is doing must be explained to her.

So held, affirming a decision of Phillimore, J., who, on the findings of a jury, entered judgment in favour of the plaintiff.—*TALBOT v. VON BORIS, C.A.*, 290; 1911, 1 K. B., 854.

2. *Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39)—Order of Justices—Appeal by husband to Divisional Court—Application for security by wife—Security ordered.*—Where a husband, possessed of means, appealed from an order of a court of summary jurisdiction, the President granted the application of the wife, without means, that the husband should find security for her costs of appeal.—*L. v. L., P.D.*, 330.

And see Divorce.

#### INDUSTRIAL SOCIETY:—

1. *Nomination by member of person to receive benefits—Limit of amount—Date when amount is to be ascertained—Industrial and Provident Societies Act, 1893 (57 & 58 Vict. c. 39), s. 25, sub-section 1.*—A member of an industrial society registered under the Friendly Societies Acts nominated the plaintiff as the person to whom, on his death, his property in the society should be transferred. At that time the nominator had £98 13s. standing to his credit, but at the date of his death that sum, with added interest, exceeded £100. By section 25 (1) of the Industrial and Provident Societies Act, 1893, a member of a registered society may nominate a person to whom his property in the society shall be transferred at his decease, "provided the amount credited to him in the books of the society does not then exceed £100." The society disputed the claim on the ground that the nomination had become inoperative or void by reason of the fact that the sum the nominator had at the time of his death exceeded £100.

Held (Farwell, L.J., *dissenting*), that the time at which the limit of amount fixed by the section was to be taken was the date of nomination, and not the date of the nominator's death.—*GRIFFITHS v. ECCLES PROVIDENT INDUSTRIAL SOCIETY, C.A.*, 440.

#### INSURANCE:—

1. *Burglary—Exemption where loss caused by member of assured's staff—Servant admitting burglars.*—A policy of assurance against burglary contained a proviso that there should be no claim on the policy for loss occasioned by the theft of a member of assured's business staff. A member of the assured's business staff before locking up the premises admitted one of a gang of thieves. He then locked up the premises and departed. The thief within admitted other confederates, who stole goods of considerable value, and the servant shared in the plunder.

Held, that the loss was occasioned by the servant's theft, and that no claim could be made under the policy.—*SAQUI v. STEARNS, C.A.*, 91; 1911, 1 K. B. 426.

2. *Marine—Non-disclosure to underwriters of material facts—Speculative policies of insurance by manager of vessel who was also agent of insured—"Honour" policies—Gaming and wagering contracts—Marine Insurance Act, 1906 (6 Ed. 7, c. 41), s. 4.*—Certain underwriters disputed their liability under contracts of marine insurance on the ground of non-disclosure of material facts and circumstances relating (a) to over insurance, (b) speculative policies of insurance by manager of vessel who was also agent of insured, and (c) that the master of the vessel recently appointed, having been ashore for twenty-two years and having left the sea owing to his certificate having been suspended for six months in respect of the loss of his vessel, he was incompetent to act as master, and by his appointment there was a breach of warranty of seaworthiness by the insured.

Held, that there was not evidence on which the finding of the courts below that the master was competent could be interfered with, but that the policies, although P.P.I. policies, were void as coming within section 4 of the Marine Insurance Act, 1906, and therefore the underwriters were entitled to judgment.

Decision of First Court of Session in Scotland (1910, Sess. Cas. 1072) reversed.—*THAMES AND MERSEY MARINE INSURANCE CO. v. GUNFORD SHIP CO., H.L.*, 631.

#### INTEREST:—

*Damages—Judgment—Damages to be ascertained—Interest on amount recovered—From date of order or certificate—1 & 2 Vict. c. 110, ss. 17, 18.*—In an action of trespass an order by consent was

made whereby it was referred to a special referee to ascertain the amount of the damages, and the defendants agreed to pay the amount certified.

Held, that the plaintiffs were entitled to interest on the amount certified from the date of the certificate, and not from the date of the order.—*ASHOVER FLUOR SPAR MINES v. JACKSON, Eve, J.*, 649.

See also Bankruptcy.

#### INTERPLEADER:—

*Appeal—Interpleader issue directed to be tried before a master—Order of master—Appeal, right of—R. S. C., LVII, 11, 13.*—Where an interpleader issue is directed to be tried before a master and on the trial of the issue the master arrives at certain findings, and makes an order, an appeal lies from his decision to the Divisional Court.

*Blair v. Clark* (52 SOLICITORS' JOURNAL, 498; 1908, 2 K. B. 548) followed.—*Cox v. BOWEN, K.B.D.*, 581; 1911, 2 K. B. 611.

And see Bankruptcy.

#### JUSTICES:—

*Deposition out of court—Duty to take—Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17—Russell Gurney's Act, 1867 (30 & 31 Vict. c. 35), s. 6.*—While it is the primary duty of a magistrate to take the deposition of anyone who can give useful evidence in a particular matter, it may not be always practicable or permissible to do so. In the exercise of his discretion as to whether it is practicable, which must be judicially exercised, the magistrate must not allow himself to distinguish between the gravity of offences, but, in every indictable offence where it is practicable, must attend and take the deposition required.—*REX v. BROS, K.B.D.*, 47; 1911, 1 K. B. 159.

#### LANDLORD AND TENANT:—

1. *Contract—Flat let to "kept" woman—Man received at flat—Rent paid by man through mistress—Circumstances known to landlord's agent—Illegal contract—Defence to action for rent.*—It is a good defence to an action for the rent of a flat that at the time the flat was let to the defendant the plaintiff's agent, who let the flat, knew that the defendant was the mistress and "kept" woman of H., that the defendant intended to receive H. at the flat, and that the rent was to be found by H., although paid through the defendant.

*Pearce v. Brooks* (L. R. 1 Ex. 213) followed.—*UPFILL v. WRIGHT, K.B.D.*, 189; 1911, 1 K. B. 506.

2. *Covenant to repair—Breach of covenant—Waste—Relief against forfeiture—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14(2).*—A lessee applying, under section 14 (2) of the Conveyancing and Law of Property Act, 1881, for relief against forfeiture must come into court with clean hands, and relief will not be granted if he avows an intention to continue or repeat a breach of a covenant contained in his lease.—*ROSE v. HYMAN, C.A.*, 405.

3. *Covenant—Repair and keep in thorough repair and good condition—Old house—Rebuilding front wall.*—A tenant who has covenanted to repair and keep in thorough repair and good condition the demised premises is bound to rebuild the front wall of the premises if required to do so by the local authority on the ground that the structure is dangerous, even though the condition of the wall is caused by the lapse of time and nothing else, such a work being only a repair of a subsidiary portion of the premises, and not amounting to a substantial change in the character of the property demised.—*LURCOTT v. WAKELY, C.A.*, 290; 1911, 1 K. B. 905.

4. *Covenant not to assign without consent—Payment for leave to assign—Lease granted in 1874—Relief to lessee—Conveyancing Act, 1892, s. 3.*—Section 3 of the Conveyancing Act, 1892, applies to leases in existence at the date of the Act as well as to leases granted subsequently. The effect of the refusal of a landlord to give his assent to assignment except on payment of a fine is to relieve the lessee from the necessity of obtaining the lessor's consent.—*WEST v. GWYNNE, C.A.*, 519.

5. *Derogation from grant—Covenant for quiet enjoyment—Loss of privacy—Mandatory injunction.*—The tenant of a flat complained that his privacy had been interfered with by the erection of a staircase, and that in permitting it to be erected his landlord had derogated from his own grant and had committed a breach of the covenant for quiet enjoyment.

Held, that as the staircase had not rendered the flat materially less fit for the purposes for which it had been demised there had been no derogation from the landlord's grant, and that a mere annoyance such as the loss of privacy did not amount to a breach

of the covenant for quiet enjoyment.—*BROWN v. FLOWER, Parker, J.* 108; 1911, 1 Ch. 219.

6. *Distress—Seizure of goods not belonging to tenant—Declaration—Goods on the hire system—Exemption from distress—Statutory Declaration Act, 1835—Law of Distress Amendment Act, 1908, ss. 4 (1).*—By section 1 of the Law of Distress Amendment Act, 1908, it is provided that "if any superior landlord shall levy, or authorize to be levied, a distress on any furniture, goods, or chattels of" any under tenant, lodger, or "any other person whatsoever not being a tenant of the premises or of any part thereof, and not having any beneficial interest in any tenancy of the premises or of any part thereof, for arrears of rent due to such superior landlord by his immediate tenant, such under tenant, lodger, or other person aforesaid may serve such superior landlord or the bailiff or other agent employed by him to levy such distress with a declaration in writing made by such under tenant, lodger, or other person aforesaid, setting forth that such immediate tenant has no right of property or beneficial interest in the furniture, goods, or chattels so distrained or threatened to be distrained upon, and that" they are "the property . . . of such under tenant, lodger, or other person aforesaid . . . and to such declaration shall be annexed a correct inventory subscribed by the under tenant, lodger, or other person aforesaid of the furniture, goods, and chattels referred to in the declaration; and if any under tenant, lodger, or other person aforesaid shall make or subscribe such declaration or inventory, knowing the same or either of them to be untrue in any material particular, he shall be deemed guilty of a misdemeanour."

By section 4 (1) of the same Act the Act shall not apply "to goods belonging to the husband or wife of the tenant whose rent is in arrear, nor to goods comprised in any bill of sale, hire-purchase agreement, or settlement made by such tenant, nor to goods in the possession, order, or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof."

A piano held by a tenant under a hire-purchase agreement from the plaintiffs was seized for rent.

A member of the plaintiffs' firm signed a declaration which was not in the form prescribed by the Statutory Declaration Act, 1835. The declaration was disregarded by the bailiff, and the plaintiffs sued him to recover the piano or its value.

Held, that the declaration was valid, and that the words "made by such tenant" in section 4 (1) of the Act of 1908 did not render goods exempted by section 1 of the Act liable to seizure, as the words must be read as applying to all that went before—not only to "settlement," but also to bill of sale and hire-purchase agreement.

Decision of Divisional Court (54 SOLICITORS' JOURNAL, 477) affirmed.—*ROGERS v. MARTIN, C.A.*, 29; 1911, 1 K. B. 19.

7. *Lease by deed—Innocent misrepresentation by lessor inducing contract—Right of tenant to cancellation of lease—Equity jurisdiction of county court—"Value of property not exceeding £500"—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67.*—A lease by deed which has been executed by the lessee on the faith of an innocent misrepresentation on the part of the lessor, and under which the lessee has gone into possession, will not be rescinded by the Court upon the ground that the execution of the deed was induced by such misrepresentation.

Under section 67 of the County Courts Act, 1888, a county court judge has no power under the equity jurisdiction of the county court to try an action for the cancellation of an agreement for a lease of any property which exceeds £500 in value, although the interest in the property actually dealt with by the lease is less in value than that amount.—*ANGEL v. JAY, K.B.D.*, 140; 1911, 1 K. B. 666.

See also Agricultural Holdings, Covenant, Lease.

#### LANDS CLAUSES ACT.

*Compensation—Award in favour of the plaintiff—Costs—Sufficiency of previous offer.*—An offer of compensation under section 34 of the Lands Clauses Consolidation Act, 1845, must be plain, clear, and unconditional. Therefore, where a railway company against whom a claim for compensation was made in respect of the diversion of a footpath intimated to the claimant's solicitor that they proposed to make a new road, "and on the understanding that such road will be made to make your client an offer of £50 in settlement of his claim."

Held, not to be a good offer within section 34, and therefore the claimant, although only awarded £50 in the arbitration proceedings, was entitled to the costs of such proceedings.

Decision of Philimore, J. (1910, 2 K. B. 252; 79 L. J. K. B. 870), affirmed.—*FISHER v. GREAT WESTERN RAILWAY, C.A.*, 76; 1911, 1 K. B. 551.



## LAND TAX.

*Redemption—Land abutting on highway—Exoneration ad medium filum—Presumption.*—There is a presumption that the redemption of land tax exonerates an adjoining highway *ad medium filum*.—CENTRAL LONDON RAILWAY v. CITY OF LONDON LAND TAX COMMISSIONERS, C.A., 714.

## LEASE.

*Rescission—Innocent misrepresentation—Construction—Absolute covenant or qualifying clause.*—An underlease of a house contained a covenant that the tenant should use the premises only for private residential purposes, but should be entitled to carry on thereon a high-class boarding establishment.

Held, on construction of the covenant that these words amounted to an absolute covenant by the underlessee, as against all the world, that the tenant should be at liberty to carry on a boarding establishment.—MILCH v. COBURN, C.A., 441.

## LICENSING LAW.

1. *Compensation for non-renewal of licence—Devise of licensed premises—Bequest of business—Right of legatee of business to participate in compensation—Licensing Act, 1904.*—Where the owner of licensed premises devises them to A., and bequeaths the business there carried on to B., and the business is discontinued before compensation is awarded for non-renewal of the licence, B. has no claim to participate in the compensation.—RE SPURGE, EVE, J., 499.

2. *Compensation money—Award by Inland Revenue Commissioners—Successful appeal by brewers—Power to order the Commissioners to pay costs—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 10 (3)—Licensing Act, 1904 (4 Ed. 7, c. 23), s. 2.*—It is the duty of the Inland Revenue Commissioners, to whom the question of fixing the amount of compensation is referred, to make reasonable inquiries as to the amount of compensation payable, and not to fix the amount without giving the parties interested full opportunity of meeting any objection and of doing what can be done to avoid an appeal.

Therefore, where a party interested in licensed premises successfully appealed to the High Court against the amount awarded by the Commissioners of Inland Revenue as compensation under the Licensing Act, 1904, for the non-renewal of the licence, the court being of opinion that in the circumstances of the case the Commissioners had acted unreasonably, and that their conduct had led to the appeal, an order that the Commissioners should pay the successful party's costs can properly be made.

So held by Court of Appeal, affirming an order of Bray, J., reported 26 T. L. R. 605.—RE HARDY'S CROWN BREWERY AND ST. PHILIP'S TAVERN, C.A., 11.

3. *Off-licence—Refusal to renew—Previous convictions under the Licensing Acts—Meaning of subsequent offence—Licensing Act, 1910 (10 Ed. 7, c. 24), s. 65.*—In November, 1910, the appellant, an holder of an off-licence, was summoned under section 3 of the Licensing Act, 1872, for two offences—namely, for having sold beer at unauthorized places, and for exposing beer for sale at the same time and places. He was served with two separate informations, but the summonses were heard together, and the appellant was convicted and fined on both charges. On the 8th of February, 1911, the appellant applied for a renewal of his licence at the general licensing sessions. The police pointed out to the justices that the appellant had previously been twice convicted of an offence under the Licensing Acts. Thereupon the justices refused the renewal, on the ground that the licence had been forfeited by operation of law, so that there was no licence in existence which could be renewed.

Held, that the proper construction of section 65 of the Licensing Act, 1910, was that a second offence meant an offence committed after a previous conviction; that the statute aimed at repressing repeated breaches of the law; and that, as there was nothing to shew the justices which of the convictions relied on was a second offence, the rule to make the justices hear the application for renewal must be made absolute.—REX v. SOUTH SHIELDS JUSTICES, K.B.D., 386; 1911, 2 K. B. 1.

## LIMITATIONS, STATUTE OF:—

1. *Legal personal representative—Assets paid to wrong person—Recovery by person entitled—Lapse of time—Limitation Act, 1623—Trustee Act, 1888, s. 8.*—A legal personal representative handed over assets to the wrong person more than six years before the commencement of proceedings by the person entitled to recover the same.

Held, that the claim was barred.—RE CROYDEN, EVE, J., 732.

2. *Trespass—Claim of right—Discontinuance and acquisition of possession—Acts of ownership—Injunction—Real Property Limitation Acts, 1833 and 1874 (3 & 4 Will. 4, c. 27, s. 3; 37 & 38 Vict. c. 57, s. 1).*—A defendant in an action for an injunction and

damages for trespass was the owner of land divided from the land of the plaintiffs by a wall belonging to the plaintiffs, and by a strip of land, on the defendant's side of the wall, the ownership of which was in dispute. The defendant had tipped rubbish on his own land and also on the disputed strip up to and against the wall. There was evidence that the wall had been built in 1894 and 1895, and that the plaintiffs had since then made no further use of the strip except occasionally in repairing and altering their wall; and there was some evidence that the defendant or his tenant had grazed cows up to the wall. The defendant contended that the plaintiffs had discontinued possession and that the defendant had acquired a good title under the Real Property Limitation Acts, 1833 and 1874.

Held, that the plaintiffs were entitled to succeed.

Observations on discontinuance and acquisition of possession under the Real Property Limitation Acts.—KYNOCHE (LIM.) v. ROWLANDS, JOYCE, J., 617.

And see Executor.

## LOCAL GOVERNMENT:—

1. *Election to borough council—De facto councillor for more than twelve months—Interest in contract with council—Election as alderman and mayor—Municipal Corporations Act, 1882, ss. 12-15, 73.*—W. was elected a councillor of a borough council on the 1st of November, 1909, and on the 9th of November, 1910, he was elected by the council as an alderman and mayor. Throughout the period between the election in 1909 and that in 1910 W. had an interest in a continuing contract with the council.

Held, that on the 9th of November, 1910, W. was a "councillor" within the meaning of sections 14 and 15 of the Municipal Corporations Act, 1882, and so was duly elected an alderman and mayor of the council.—SHAFTESBURY ELECTION PETITION, K.B.D., 668.

2. *Fire-plug—Mark not indicating correctly the position of fire-plug—Fire-plug in private road covered up—Fire—Damage—Liability of Urban District Authority—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 66.*—By section 66 of the Public Health Act, 1875: "Every urban authority shall cause fire-plugs and all necessary works, machinery, and assistance for securing an efficient supply of water in case of fire to be provided and maintained, and for the purpose may enter into any agreement with any water company or person. And they shall paint or mark on the buildings and walls within the streets, words or marks near to such fire-plugs, to denote the situation thereof, and do such other things for the purposes aforesaid, as they may deem expedient."

A fire broke out on the plaintiffs' premises. The efforts of the fire brigade to extinguish the fire were considerably retarded, because the fire-plug was some feet out of position in relating to the indicator plate, and the plug itself was buried in the earth to a depth of six inches. The road had not been taken over by the local authority (who were also the water authority), nor had the fire plug been covered up by or with the knowledge of the defendants. In an action by the plaintiffs to recover damages from the defendants for breach of the duty imposed on them by the above section,

Held, that by not removing soil, which covered up the fire-plug, and in affixing an indicator plate which did not show its correct position, the defendants had been guilty of a breach of duty, for which the plaintiffs were entitled to maintain an action for damages.

Decision of Grantham, J. (27 T. L. R. 46), reversed.—DAWSON & CO. v. BINGLEY URBAN COUNCIL, C.A., 346; 1911, 2 K. B. 149.

3. *Loan—Money originally borrowed by local authority with sanction of Local Government Board and security given to bank—Subsequent transfer of loan from bank to another bank—No security given to second bank—Alleged improper "borrowing"—Disallowance and surcharge of interest—Public Health Act, 1875, s. 233.*—A sum of money was borrowed by a local authority, with the sanction of the Local Government Board, on the security of the rates, from the Wilts and Dorset Bank in 1900. In 1902 the corporation transferred their account from that bank to the National and Provincial Bank, and it was arranged that the latter bank should pay off the balance of loans and interest due to the Wilts and Dorset Bank. This was done, but the mortgages held as security by the Wilts and Dorset Bank were not transferred to the National and Provincial Bank, although receipts for the sums paid by the latter bank were endorsed thereon. In March, 1909, the defendant Locke, an auditor under the board, disallowed and surcharged the present appellants in a sum of £2 12s. 6d., interest due on the balance of the loan to the bank, on the ground that there had been an improper exercise of borrowing powers, no security having been given to the National and Provincial Bank.

The Divisional Court discharged the rule obtained by the appellants, calling upon the auditors to shew cause why a writ of *certiorari* should not issue to bring up to be quashed his certificate of disallowance and surcharge.

On appeal the Court of Appeal allowed the appeal, and made the rule absolute on the ground that the substance of the transaction in question was merely the transfer of the old loan from the Wilts and Dorset Bank to the National Provincial Bank, and that there had been no new borrowing on the part of the corporation, and therefore the surcharge was not justified.—*REX v. LOCKE, C.A.*, 139; 1911, 1 K. B. 680.

4. *Public park—Dedication—Park purposes—Widening street—Improvement of park.*—The court will not readily infer dedication to the public. Where a corporation purchased 53 acres, 40 of which were intended to be used as a public park, the court would not infer dedication of the whole of the 53 acres simply because the remaining 13 acres were not fenced off and were used by the public as part of the park.—*ATTORNEY-GENERAL v. BRADFORD CORPORATION, Eve, J.*, 715.

5. *Streets—Statutory power to "lay down suitable mains throughout" a street—Standards for overhead wires—Trespass—Nuisance—Mandatory injunction—Electric Lighting Act, 1882, (45 & 46 Vict. c. 50)—Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), s. 21—Lands Clauses Consolidation Act, 1845) 8 & 9 Vict. c. 18), s. 68.*—An urban district council, being empowered by the Electric Lighting Act, 1882, and the Electric Lighting (Clauses) Act, 1899, to "lay down suitable mains throughout" certain streets for the purpose of supplying electricity, and having obtained the sanction of the Board of Trade to a system of overhead mains, erected standards to carry the wires in a certain street. Two standards were erected in land, the "surface" of which had been conveyed by the plaintiff to the defendants to be used as a highway; a third in land which, though not vested in the defendants, but belonging to the plaintiff, had in fact become part of the highway. The plaintiff sought a mandatory injunction for the removal of the standards on the ground of trespass and nuisance.

Held, as regards the two standards, that by virtue of the conveyance the land was vested in the defendants (with reservation of the minerals to the plaintiff); as regards the third, that the defendants were empowered so to erect it, by section 21 of the Act of 1899.

*Ecott v. Mayor, &c., of Newport* (1904, 2 K. B. 369) followed.—*ANDREWS v. ABERTILLERY URBAN COUNCIL, Warrington, J.*, 347.

#### LONDON :—

1. *Building—Party wall—Very damp—"Defective or out of repair"—London Building Act (57 & 58 Vict. c. cxxii.), s. 88 (1).* A party wall within the meaning of the London Building Act, 1894, if it is permeated with dampness may be "defective" within the meaning of section 88 (1) of that Act, although it is in no way cracked or out of position.—*MINTURN v. BARRY, K.B.D.*, 385.

2. *Court of quarter sessions—Place for holding—Body to determine—County Council or Standing Joint Committee—Power to require new building for site selected—In whom vested—Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 3, 29, 30, 40, 42, 64, 65 (1), and 116.*—Under section 29 of the Local Government Act, 1888, the High Court has jurisdiction to entertain a case stated upon the question whether the power of determining the places at which quarter sessions for the county of London should be held has been transferred to the London County Council. The power of determining the place or places at which quarter sessions for the county of London shall be held is vested in the London County Council, subject to the approval of the Secretary of State and not in the Standing Joint Committee. Accordingly the Council has the power and duty of determining whether any and what new site shall now be acquired for the accommodation of quarter sessions, but the power and duty of determining the accommodation on such site when chosen is vested in the Standing Joint Committee, and such accommodation must be provided by the London County Council.—*STANDING JOINT COMMITTEE OF QUARTER SESSIONS AND COUNTY COUNCIL OF LONDON v. LONDON COUNTY COUNCIL, K.B.D.*, 716.

3. *General line of buildings in street—Shops erected on forecourts—Alteration of building line—Consent of Metropolitan Board of works—Metropolis Management Amendment Act, 1862, s. 75—London Building Act, 1894, ss. 22, 27, 216.*—The superintending architect certified that the frontage line of old houses in the respective forecourts of which, in some cases, one-storey shops had been erected, was still the general line of buildings in that part of the street.

The Tribunal of Appeal took the view that the general line of buildings was the frontage-line of the shops.

The Court of Appeal upheld the certificate of the superintending architect, and the building owners appealed.

Held, dismissing the appeal with costs, that the superintending architect had rightly disregarded the one-storey buildings which had subsequently been erected on the forecourts, as there was evidence that some only had been erected with the consent of the Metropolitan Board of Works, while as to one of the others there was evidence that the consent of the board had been refused; and as to the rest, there was no evidence that consent had been applied for.

Decision of Court of Appeal (1909, 2 K. B. 317; 53 SOLICITORS' JOURNAL, 558; 78 L. J. K. B. 830) affirmed.—*FLEMING v. LONDON COUNTY COUNCIL, H.L.*, 28; 1911, A. C. 1.

See also *Rating, Waterworks.*

#### MASTER AND SERVANT :—

1. *Claim paid by master—Joint tortfeasors—Indemnity—Workmen's Compensation Act, 1906, s. 6.*—Section 6 of the Workmen's Compensation Act, 1906, provides that: "Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—(1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation; and (2) if the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this Act relating to sub-contracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this Act."

Held, that on the true construction of the above section, the plaintiffs, who were found guilty of contributory negligence, were not entitled to be indemnified by the defendants, merely by reason of the fact that they had paid compensation, as the section did not give one of two joint tortfeasors a right of action over for indemnity against the other tortfeasor.—*W. CORY & SONS v. W. FRANCE, FENWICK & Co., C.A.*, 11; 1911, 1 K. B. 114.

2. *Employer and workman—Disputes—Subsisting claims—Jurisdiction of Court of Summary Jurisdiction to adjust and set off—Set off of employer's claim for damages against workmen's wages—Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), ss. 3 (1), 4.*—Upon the hearing of a summons by employers against a workman under the Employers and Workmen Act, 1875, claiming damages for breach of contract to work, the employers shewed that certain wages were due from them to the workmen and asked that the "claim" for damages and costs and the "claim" for wages might be adjusted and set off the one against the other, under section 3 (1) of the Act. The workman had, in fact, put forward no claim to wages. The magistrate awarded damages to the employers, and found as a fact that a sum had been earned by and was due to the workman for wages, and was payable two days subsequent to the day on which the summons was heard. He held the wages constituted a "claim" on the part of the workman, and he set off the claim for damages and the claim for wages the one against the other.

Held, that the magistrate had jurisdiction to treat the indebtedness of the employers to the workman for wages as a subsisting claim, and therefore, there being a dispute between the employers and the workman, the magistrate had power to adjust and set off under the section.

Decision of Court of Appeal (Fletcher Moulton, L.J., dissenting) (54 SOLICITORS' JOURNAL, 522; 1910, 2 K. B. 445) affirmed.—*KEATES v. LEWIS MERTHYR CONSOLIDATED COLLIERIES, H.L.*, 667.

3. *Employer and workman—Injury by accident—Negligence of fellow workmen—Claim by employer to be indemnified by fellow workmen—"Some person other than the employer"—Workmen's Compensation Act, 1906 (6 Ed. 7 c. 58), s. 6.*—A workman was injured as the result of a breach by two fellow workmen of a regulation made by the Secretary of State, under section 79 of the Factory and Workshop Act, 1901. The workmen were convicted and fined under section 85 (2) of that Act.

Held, that as the injured man could have maintained an action for damages against the workmen, based on negligence, in spite of the conviction under the Factory Act, the employers of the injured workman, who had paid him compensation under the Workmen's Compensation Act, 1906, could claim indemnity from them under section 6, as a fellow workman is a "person other than the employer" within the meaning of that section.

Decision of Court of Appeal (noted in 129 Law Times 9, and



reported in 3 B. W. C. C. 347) affirmed.—*LEES v. DUNKERLEY*, *H.L.*, 44; 1911, A. C. 5.

4. *Mine owner—Managers or agents—Machinery fit for the purpose—Negligence on part of their servants—Coal Mines Regulation Act, 1887* (50 & 51 Vict. c. 58), ss. 20, 49, 50, 51, 65.—The plaintiffs, the widow and children of a deceased collier, sued the defendant company, claiming damages for his death under Lord Campbell's Act. The jury found that the accident which caused the death of the collier was due to the negligence of the mines manager, whose duty it was to see that the machinery by which the men were taken up and down the mine was safe for that purpose; that there had been no negligence on the part of the company, who had taken all reasonable care to appoint a manager qualified to undertake this responsibility; and that the machinery was fit for the purpose it was to be used for when put up by the company.

Held, reversing the decision of Pickford, J., given in favour of the plaintiffs, upon the findings of the jury, that under section 20 of the Coal Mines Regulation Act, 1887, the company could delegate to managers and agents certain parts of the working of the mine for which they became responsible under the general rules in Part II. of the Act and the regulations made in accordance with the provisions of the Act, and that as the negligence which caused the accident here was not the negligence of the company but of the manager, the company were entitled to judgment.

Appeal allowed, and verdict and judgment for plaintiffs set aside.—*WATKINS v. NAVAL COLLIERY CO., C.A.*, 347; 1911, 2 K. B. 162.

5. *Notice—Contract—Domestic servant—Custom—First month's service—Custom to leave at end of first month—Judicial notice—Right to wages accrued due.*—A domestic servant entered an employment on 3rd November, gave notice on 17th November that she would leave the service on 3rd December, and then left. On her master refusing to pay her a month's wages she sued him in the county court. The judge took judicial notice of a custom with regard to hiring of domestic servants that in the absence of special contract there is a right on the part of either the master or the servant to determine the service at the end of the first calendar month by notice given at or before the expiration of the first fortnight, although the plaintiff adduced no evidence of such a custom. Accordingly he gave judgment for the plaintiff for the month's wages.

Held, on appeal, (1) that the court could not say that the county court judge was wrong in taking judicial notice of this custom, and (2) that, as it appeared that the agreement was to pay the servant's wages monthly, the month's wages having accrued due, she was entitled to them.—*Moult v. Halliday* (1898, 1 Q. B. 125) discussed.—*GEORGE v. DAVIES, K.B.D.*, 481.

6. *Workmen's compensation—Common risk—Accident arising out of employment—Workmen's Compensation Act, 1906* (6 Ed. 7, c. 58), s. 1 (1).—Where a workman's employment exposed him to a greater risk than ordinary from a common danger to which other members of the public are also exposed, such as being run over in the street, the danger arises out of his employment. And in such a case, it makes no difference that the workman has adopted the more dangerous of two methods of transit, at any rate where both are permitted by the employers.—*PEARCE v. PROVIDENT CLOTHING AND SUPPLY CO., C.A.*, 363.

7. *Workmen's compensation—Concurrent contracts of service—Incidental advantages—Workmen's Compensation Act, s. 9, Schedule I., par. 2 (b).*—The applicant was a stoker in the mercantile marine, and was also enrolled in the Royal Naval Reserve as a stoker, in respect of which latter appointment he was entitled to a retainer of £6 a year. He was injured by an accident in the course of his employment in the mercantile marine which prevented him from continuing in the Royal Naval Reserve. In computing his average weekly earnings the county court judge had regard to the annual payment which the man received from the Admiralty in addition to his wages in the mercantile marine, and made his award on this footing.

Held, that in computing the applicant's average weekly earning the award was right, because the man was serving under "concurrent contracts of service" within the meaning of Schedule I. (2) (b), and there was nothing in section 9 to affect the position of persons other than the Crown.

Decision of Court of Appeal (Farwell, L.J., dissentiente) (1911, 1 K. B. 376) affirmed.—"*RAPHAEL*" *STEAMSHIP v. BRANDY, H.L.*, 579; 1911, A. C. 413.

8. *Workmen's compensation—Course of the employment—Accident to workman while on his way to work—Footpath leading to pit—Workmen's Compensation Act, 1906*, s. 1 (1).—A miner going to his work went across a footpath which was a near way to the pit. Just after leaving the high road he had to descend some steps cut in the mountain side to get on to the path. The morning

was frosty, and he slipped on the steps and was injured. The steps were over three-quarters of a mile from the pit.

Held, that the accident did not arise in the course of the man's employment.

*Davies v. Rhymney Iron, &c. Co.* (1893, 16 T. L. R. 329) followed.—*WALTERS v. STAVELLEY COAL AND IRON CO., H.L.*, 579.

9. *Workmen's compensation—Course of the employment—Death of captain of a ship by drowning from a public quay—Waiting for boat to return to ship—Fatal risk not specially connected with his employment—Onus of proof—Workmen's Compensation Act, 1906* (6 Ed. 7, c. 58), s. 1 (1).—The captain of a small coasting vessel went ashore in the evening, and, after going to an hotel not far from the quay, returned to the quay, and hailed a boat to come from the ship to take him aboard. While waiting for the boat, he fell into the water and was drowned. The evidence was equally consistent with his having gone ashore on ship's business or for his own purposes.

Held, that the applicant had not discharged the onus of proving that the accident arose out of and in the course of his employment.

*Per Lord Loreburn*: The risk from which he perished was not one specially connected with his employment.

Decision of Court of Appeal (54 SOLICITORS' JOURNAL, 325; 1910, 1 K. B. 722) affirmed.—*FLETCHER v. STEAMSHIP "DUCHESS," H.L.*, 598.

10. *Workmen's compensation—Course of employment—Seaman on watch on deck falls overboard—No direct evidence—Probability that the accident arose out of the employment—Inference to be drawn—Workmen's Compensation Act, 1906*, s. 1 (1).—The chief officer of a steam vessel fell overboard between 7 and 8 a.m. on a fine morning at a time when he was on duty and in charge of the vessel on deck. No one saw him fall over, and what caused the accident was an unexplained mystery. Before 7 a.m., and during the watch, which commenced at 4 a.m., he had gone below complaining of headache and giddiness, and had taken a dose of castor oil, but returned to his duty on deck.

Held, that as the accident happened while the man was actually on duty, there was some evidence that it "arose out of" as well as "in the course of" his employment. Therefore, the county court judge was justified on the balance of probability in drawing the inference that the accident causing the death of the seaman arose out of, as well as in the course of, his employment.

Decision of Court of Appeal (Buckley, L.J., dissenting) following *Mitchell v. Glamorganshire Coal Co. (Limited)* (1907, 23 L. T. R. 588) (reported 26 L. T. R. 276; 3 B. W. C. C. 152) affirmed.—"*SWANSEA VALE*" *STEAMSHIP v. RICE, H.L.*, 497.

11. *Workmen's compensation—Course of employment—Serious and wilful misconduct—Workmen's Compensation Act, 1906* (6 Ed. 7, c. 58), s. 1 (1) (c).—A workman who, for the purposes of his employment, goes into a place which he is expressly forbidden to enter, and there meets with an accident, is guilty of serious and wilful misconduct within the Workmen's Compensation Act, 1906, but is not acting outside the course of his employment so as to deprive his dependants of the benefits of the Act in the case of his death from the accident.—*HARDING v. BRYNDDU COLLIERY CO., C.A.*, 599.

12. *Workmen's compensation—Death from angina pectoris—Accident arising out of employment—Burden of proof—Workmen's Compensation Act, 1906* (6 Ed. 7, c. 58), s. 1 (1).—The burden of proof that an accident arose out of the course of employment lies on the workman and his representatives, and can only be discharged by direct evidence or necessary inference from the facts. Where, therefore, a workman while engaged on his work was taken ill and died of angina pectoris, which, according to the medical evidence, was of long standing, and might have produced death from several causes and not immediately following on any exertion, it was held that there was not sufficient evidence that the accident arose out of the employment.—*HAWKINS v. POWELL'S TILLEY STEAM COAL CO., C.A.*, 329.

13. *Workmen's compensation—Dependants in part dependent—Wife living voluntarily apart from her husband and supporting herself entirely—Workmen's Compensation Act, 1906* (6 Ed. 7, c. 38), s. 13; Schedule 1 (1) a (i.) and (ii.).—The presumption in law that a man in ordinary circumstances is liable to maintain his wife is not alone evidence sufficient to support a claim for compensation as dependent by his widow, and may be rebutted if the evidence establishes that at the time of the husband's death by accident the wife in fact was entirely supporting herself. A married woman left her husband, on account of his cruelty to her, twenty-two years before he met with a fatal accident while in the employment of the appellants. The county court judge held that there had been no abandonment of the wife's rights, and on the footing of partial dependency awarded her compensation. On appeal the award was



affirmed, on the ground that as the applicant might at any time have made a claim for maintenance, she was placed in a worse position by her husband's death, and therefore entitled to compensation.

Held, that the facts proved rebutted the presumption in law, and therefore the award must be set aside.

*Per Lord Atkinson* : It may be that a husband is bound to maintain her, but it is by the discharge of this obligation, not by its mere existence in law, that a husband supports and maintains his wife.

*Per Lord Robson* : Money coming to a widow under the Act is not a present in consideration of her status ; it is a payment by a third person to compensate her, as a dependant, for her actual pecuniary loss by her husband's death.

Decision of Court of Appeal (1911, 1 K. B. 250) reversed.—*NEW MONCKTON COLLIERIES v. KEELING, H.L.*, 687.

14. *Workmen's compensation—Disfigurement—Loss of earning capacity—Incapacity to work—Workmen's Compensation Act, 1906, s. 1.*—Where an accident causes disfigurement only as distinct from incapacity, the case does not fall within the Workmen's Compensation Act, 1906. A workman, therefore, who was blind of one eye was held not to be entitled to compensation for an accident which resulted in the removal of his blind eye.—*BALL v. HUNT AND SONS, C.A.*, 383 ; 1911, 1 K. B. 1048.

15. *Workmen's compensation—Frost-bite—Accident arising out of employment—Workmen's Compensation Act, 1906, s. 1.*—A journeyman baker, whose arm was injured by frost-bite while on his rounds with his employer's cart, was held not to be entitled to compensation under the Workmen's Compensation Act, 1906, as the accident did not arise out of his employment.—*WARNER v. COUCHMAN, C.A.*, 107 ; 1911, 1 K. B. 351.

16. *Workmen's compensation—Onus of proof—Power to draw inference—No direct evidence—Workmen's Compensation Act, 1906, s. 1 (1).*—A brakeman, while in charge of his train, which was closely following another on the same metals, met with a fatal accident. There was no evidence to establish why he decided to attempt to pass from his train on to the other in front, but the county court judge found that, as he would have to get down in a few minutes to work the points, and could do so more conveniently from the train he attempted to board, the inference could be drawn that he did so in the performance of his duty, and therefore that the accident "arose out of" his employment. Accordingly he awarded the widow compensation.

Held (Lord Atkinson dissentiente) that he was entitled to draw this inference.

Decision of Court of Appeal (1911, 1 K. B. 1037) affirmed.—*RICHARD EVANS & CO. v. ASTLEY, H.L.*, 687.

17. *Workmen's compensation—Partial dependency—Earnings—Cost of maintenance—Workmen's Compensation Act, 1906, s. 13—Schedule I, par. 1 (a) (ii).*—A boy earned 6s. 11d. a week at a colliery ; he also assisted his father on certain days in the week in his business as a barber, and these services, the father said, were worth 6s. a week to him. The boy was killed, by accident, at the colliery, and the evidence was that he paid his wages of 6s. 11d. a week into the family fund, and that his keep cost his father as much as the boy earned. The county court judge, on a claim by the father as partially dependent on the earnings of the boy, set the cost of his keep against what he contributed to the family fund, and decided that the father was not dependent in fact on the boy's earnings and made no award.

Held that the case must go back ; there was evidence upon which the father might be a dependant, if the voluntary services which the son rendered reduced the costs of the boy's keep so that, in fact, all or part of the payments he made to the family fund were available for the family support.

*Osmond v. Campbell & Harrison (Limited)* (1905, 2 K. B., 852) considered.

Order of Court of Appeal remitting case to county court (1911, 1 K. B., 341) varied.—*TAMWORTH COLLIERY CO. v. HALL, C.A.*, 615 ; 1911, 1 K. B., 341.

18. *Workmen's compensation—"Seaman"—Amount of weekly payments—Computation—"Period of his incapacity"—Maintenance and medical attendance—Liability of shipowners to defray—Merchant Shipping Acts, 1894 and 1906—Workmen's Compensation Act, 1906, s. 7 (1) (a) ; (e) ; Schedule I, s. 3.*—Wages due to a seaman between the date of an accident and his discharge by the shipowners do not come within the words "payment, allowance, or benefit" in section 3 of Schedule I. of the Act of 1906.

Held, therefore, that the county court judge was right in declining to have regard to eight days' wages due to a seaman between the happening of the accident and his discharge, as the word

"during the period of his incapacity" mean the whole period in which the shipowner is liable to pay compensation.

Decision of the Court of Appeal (Cozens-Hardy, M.R., and Farwell, L.J., Kennedy, L.J., dissenting) (53 SOLICITORS' JOURNAL, 650 ; 1909, 2 K. B. 704, 78 L. J. K. R. 1144) reversed.—*McDERMOTT v. OWNERS OF "TINTORETTO," H.L.*, 124 ; 1911, A. C. 35.

19. *Workmen's compensation—Seaman on shore for his own purposes with permission—Evidence that he was returning in the evening to resume duties on his ship which was then alongside quay—Seen to pass quay gates—Heard to fall into the water close to gangway—Drowned—Workmen's Compensation Act, 1906, s. 1 (1).*—A seaman, who had been on shore by permission, in returning late in the evening to the ship had reached the gangway connecting the ship with the quay when he appeared to have made a false step and was heard to fall into the water. Nothing more was known, and his body was found the next morning near the ship. The county court judge held that there was evidence on which the widow's claim could be supported, as the inference to be drawn was that the accident arose out of and in the course of the man's employment. The Court of Appeal reversed that decision on the ground that it was not established by the evidence that the accident arose out of the employment. The widow appealed.

Held, that the decision appealed from was right.—*KITCHENHAM v. STEAMSHIP "JOHANNESBURG," H.L.*, 599 ; 1911, A. C. 417.

20. *Workmen's compensation—Strain—Evidence—Workmen's Compensation Act, 1906, s. 1 (1).*—Claim by dependants of a collier who died of apoplexy while engaged in building a "pack." The medical evidence was to the effect that his arteries were in such a very diseased condition that apoplexy might have come upon him at any time, and there was no evidence that the seizure came upon him when he was incurring a strain.

Held, affirming the decision of the Court of Appeal that there was no evidence to support the award of the County Court judge who had found that the man's death was not the result of a blow or fall, but was caused from apoplexy brought on by a strain while engaged in the heavy work of building "the pack," the evidence of the cause of death being equally consistent with an accident and with no accident.

*Per Lord Loreburn, L.C.*—In cases under the Workmen's Compensation Act, as in other cases, the onus of proof of claim rests upon the applicant.—*BARNABAS v. BERSHAM COLLIERY, H.L.*, 63.

21. *Workmen's compensation—Taxi-cab driver—Person working under a contract of service—Bailor and bailee—Workmen's Compensation Act, 1906.*—The driver of a taxi-cab, who is paid by a percentage of his daily takings, and not by wages, and is not under the control of the cab proprietor, is in the position of a bailee of the cab, and not of a workman within the meaning of the Workmen's Compensation Act. Therefore he is not entitled to compensation under that Act for an injury received arising out of and in the course of his employment as such driver.

*Semble*, the driver, nevertheless, may be the servant of the proprietor in such a sense that, as agent, the latter may be held liable to a third person for injury caused by the negligence or default of the driver, acting within the scope of his authority.—*BATES SMITH v. GENERAL MOTOR CAB CO., H.L.*, 439 ; 1911, A. C. 188.

22. *Workmen's compensation—"Workman"—Purser—Remuneration—Bonuses—Profits on sale of whisky—Workmen's Compensation Act, 1906, s. 13.*—In determining whether the "remuneration" of any person employed otherwise than by way of manual labour exceeds £250 a year, the court should have regard to the actual total earnings of such person, and should include bonuses paid him by his employers on his giving satisfaction as well as profits made by him with his employer's knowledge.—*SKALES v. BLUE ANCHOR LINE, C.A.*, 107 ; 1911, 1 K. B. 360.

See also School.

#### MISTAKE:—

*Trust—Mistake of fact—Payment to wrong beneficiary—Right of recovery—Lapse of time—Statute of limitation* (21 Jac. 1, c. 16).—The right of a *cestui que trust* to recover a trust fund from another *cestui que trust*, to whom the fund has been wrongfully paid by the trustee through a *bona fide* mistake of fact, of which all parties were ignorant, can be defeated by the Statute of Limitations (21 Jac. 1, c. 16) where the claim is in the nature of a claim for money, and not for a specific trust fund impressed with the trust.

*Harris v. Harris* (29 Beav. 118) explained.—*RE ROBINSON, MACLAREN v. THE PUBLIC TRUSTEE, Warrington, J.*, 271 ; 1911, 1 Ch. 502.

See also Bankruptcy, Contract.

**MONEY-LENDER :—**

*Action on promissory note—Creditor paid lesser sum by third party on condition that the bill was to be deemed to have been met in full—Sum placed to account, and action for balance brought against debtor—Liability of defendant.*—The defendant gave a promissory note to the plaintiffs for 1,500 rupees. The defendant's father, without any agreement with the plaintiffs, sent them a sum of 650 rupees, to be accepted by the plaintiffs in full settlement. The plaintiffs declined to accept it as such, but retained it on account, and gave the defendant credit for the same, and then sued him for the balance.

Held, that the plaintiffs having elected to retain the money sent by the defendant's father, must be deemed to have accepted it on the terms on which it was offered them—namely, in full satisfaction of the debt, and therefore the defendant was entitled to judgment, since the plaintiffs must be deemed to be no longer holders of the note.

Decision of Scrutton, J. (reported 53 SOLICITORS' JOURNAL, 238), reversed.—*PUNAMCHAND SHRECHAND & Co. v. TEMPLE, C.A.*, 519.

See also Pawnbroker.

**MORTGAGE :—**

1. *Demand for payment off—Tender—Additional interest in lieu of notice—Keeping money idle after tender.*—When a mortgagee has served notice to repay on the mortgagor, the mortgagor may at any time thereafter tender the amount due without himself giving notice, and if his tender is refused he is not liable for additional interest in lieu of notice. But, in order to retain his right to pay no additional interest, he should pay the money into court, if there are proceedings in which this can be done; or he should keep the money ready and make no profit on it; or, if he makes a profit on it, he should account for such profit to the mortgagee.

*Bartlett v. Franklin* (1871, 15 W. R. 1077, 36 L. J. Ch. 671) explained and distinguished.—*EDMONDSON v. COPLAND, Joyce, J.*, 520.

2. *Mortgagee's costs—Realization of security—Surplus—Action for account—Action in nature of redemption action—Misconduct—Discretion of court.*—The rule that a mortgagee is entitled by contract to the costs properly incident to a redemption action does not apply to an action for account against the mortgagee after he has realized his security by sale.

*Tanner v. Heard* (23 Beav. 555) and *Charles v. Jones* (35 Ch. D. 544) followed.—*WILLIAMS v. JONES, Eve, J.*, 500.

3. *Payment off—Refusal of mortgagee to reconvey—Appointment of master to reconvey—Order—Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 26, 33.*—Where a mortgagee refuses, upon the payment off of the mortgage debt, to reconvey the mortgaged property, the Court may appoint a master to execute the conveyance on his behalf.—*HOLME v. FIELDSEND, Warrington, J.*, 552.

4. *Sale of equity of redemption—Liability of purchaser to indemnify vendor against mortgage debt—Contingent reversionary interest.*—It is doubtful whether the rule which *prima facie* throws upon the purchaser of an equity of redemption the obligation of indemnifying the vendor under his personal covenant applies where the subject matter of the sale is a contingent reversion. But if it does, the obligation on the purchaser must be conditional upon the interest vesting in possession, and until that event happens the person claiming the benefit of the implied covenant cannot sue.—*MILLS v. UNITED COUNTIES BANK, Eve, J.*, 408; 1911, 1 Ch. 669.

See also Company, Trustee.

**MOTOR-CAR :—**

*Conviction for excessive speed—Previous convictions—Form of summons—Motor-car Act, 1903 (3 Ed. 7, c. 36), ss. 1, 9, 11.*—Where a summons is taken out against the driver of a motor-car under section 1, sub-section 1 of the Motor-car Act, 1903, it is not necessary that the summons should contain a statement as to previous convictions under the Act, and, though insertion of such a statement may not be wrong in law, it is preferable that no such statement be included in the summons. The proper method is to give the defendant separate notice that such previous convictions will be charged against him.—*REX v. HANKEY, K.B.D.*, 69.

**NEGLECTANCE :—**

*Cattle straying on to highway unattended—Through open gate from field—No evidence as to who opened gate—Prima facie evidence of negligence—Burden of proof.*—Cattle strayed from a field where the defendant, the occupier of the field, kept them, on to a highway, at or about 10.30 p.m., where they occasioned an acci-

dent to the plaintiff. In an action for damages there was no evidence as to who was the person who opened the gate.

Horridge, J., held that on these facts there was *prima facie* evidence of negligence on the part of the defendant.

Phillimore, J., held that there was no evidence of negligence on the part of the defendant. There was no presumption that the fact of the gate being open threw the burden upon the occupier of shewing that it was not open by his fault.—*ELLIS v. BANYARD, K.B.D.*, 500.

See also Railway.

**NEWSPAPER :—**

*Right to title—Confusion—Deception—Injunction.*—An injunction to restrain the publication of a newspaper under the same name as that of an existing newspaper will not be granted unless it be proved that such publication causes confusion and deception, and that actual or probable damage results therefrom.—*GEO. OUTRAM & Co. v. LONDON EVENING NEWSPAPER Co., Warrington, J.*, 255.

**NUISANCE :—**

*Pollution of stream—Injunction—Local Government—Sanitary authority—Neglect of duty—Damages—Continuance of injury—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 15—Existing sewers—Duty of local authority to cleanse the sewers—Stream or sewer.*—In an action by the Attorney-General to restrain the defendants by injunction from causing a nuisance and polluting the Winterbourne stream by discharging into it sewage or filthy water, and alternatively for a declaration that the said stream, so far as it flows within the borough of Lewes, is a sewer vested in the defendants, and for an injunction restraining the defendants from keeping such sewer so as to be a nuisance or injurious to health, and by the plaintiff, Eckford, claiming damages; it was held that the stream was a sewer and was a nuisance, and an injunction was granted and damages given to the plaintiff Eckford.—*ATTORNEY-GENERAL v. LEWES CORPORATION, Swinfen Eady, J.*, 703.

**OFFICIAL SOLICITOR :—**

*Will—Maintenance—Pauper lunatic—Action by official solicitor—Instructions by court—Functions of the official solicitor.*—Where the court refers a matter to the official solicitor, the instructions, if not inserted in the order, ought to be embodied in some document, or at least be reduced into writing.

The functions of the official solicitor with regard to instituting legal proceedings considered.—*RE CATON, VINCENT v. VATCHER, Eve, J.*, 313.

**OLD AGE PENSIONS :—**

*Decision of Local Pension Committee—Statutory conditions—Jurisdiction—“Final and conclusive”—Old Age Pensions Act, 1908 (8 Ed. 7, c. 40), ss. 2, 7 (1), 9.*—By section 2 (1) of the Old Age Pensions Act, 1908, a person to be eligible for an old age pension under the Act must *inter alia* have attained the age of seventy. By section 7 (1) if any question arises as to whether the statutory conditions continue to be fulfilled the question has to go to the local pension committee, whose decision shall be final and conclusive unless there is an appeal to the Central Committee. By section 9, if it is found at any time that a person has been in receipt of an old age pension while the statutory conditions were not fulfilled in his case, or while he was disqualified from receiving the pension, he, or in the case of his death, his personal representative, shall be liable to repay to the Treasury any sums paid to him in respect of the pension while the statutory conditions were not fulfilled or while he was disqualified for receiving the pension, and the amount of those sums may be recovered as a debt due to the Crown. The question of the age of a person in receipt of a pension may be the subject of investigation at any time, as the question of age is a statutory condition which had to “continue to be fulfilled” as a condition of the right to receive the pension.

So held, dismissing an appeal by the applicant from a decision of the Court of Appeal in Ireland (reported 1911, 2 Ir. Rep. 80).—*MURPHY v. THE KING, H.L.*, 518; 1911, A. C. 401.

**PARTNERSHIP :—**

*Receiver and manager—Appointment by consent order—Indemnity in respect of liabilities—No indemnity save out of the assets—No right of subrogation.*—A receiver and manager appointed by a consent order in a partnership action, who pays debts and incurs liabilities, is not in the same position with regard to indemnity and reimbursement as a person in a fiduciary capacity who so acts. The receiver and manager is an officer of the court, and does not become an agent of the partners by reason of their consenting to his appointment. He is personally bound by the

obligations which he incurs, and can only look for indemnity to the assets under the control of the court and not to the partners personally. Nor can he claim to be subrogated to the rights of the partnership creditors whose debts he has paid.—*BOEHM v. GOODALL, Warrington, J.*, 108; 1911, 1 Ch. 155.

#### PASSING OFF:—

"Get-up"—*Laundry blue "with the stick in it"*—Article of utility—Former patent used as design revoked—Injunction.—For many years laundry blue and other dyes and tints manufactured by the plaintiffs had been sent out in little bags, protruding from which was a piece of stick, the utility of which was that the blue or dye could be dipped in water without soiling the hands. In 1884 the plaintiffs took out a patent for "blue" got up in this way, the stick or handle inserted in the wrapping being claimed as an essential part of the invention. In 1891 the patent was revoked. They, however, continued largely to advertise their goods, drawing attention to the stick as a distinctive mark. The defendants also manufactured "blue," and although the label attached was different they did their blue up with a piece of stick similar to that used by the plaintiffs. The plaintiffs claimed an injunction to restrain the defendants from putting upon the market laundry blue, &c., in a get-up exactly copied from the get-up of their goods.

Held, that there was ample evidence that the defendants intended to pass off their goods for those of the plaintiffs, and that the latter were entitled to an injunction.

Decision of Court of Appeal (1911, 1 Ch. 5, 26 Times L. R. 101) reversed.—*EDGE v. NICCOLLS, H.L.*, 737.

#### PATENT:—

1. *Appeal from decision of comptroller—Period within which petition should be presented—Special circumstance—Patents and Designs Act, 1907* (7 Ed. 7 c. 29), s. 26.—*R. S. C. LIII. (a) r. 4—Judicature Act, 1873* (36 & 37 Vict. c. 66), s. 100.—Ord. 53 (a), r. 4, provides that appeals to the court from the decision of the comptroller under sections 20, 26, and 27 of the Patents and Designs Act, 1907, shall be by way of petition presented to the court within one calendar month of the decision being given, or within such further time as the court may, under special circumstances, allow. This period is not affected by reason of the vacation coming within it. Dilatoriness of a petitioner's solicitors is not a special circumstance entitling the petitioner to an extension of time.—*RE BELDAM'S PATENT, Parker, J.*, 46; 1911, 1 Ch. 60.

2. *Infringement—Judgment for the plaintiff with delivery up—Practice—Defendants' right to elect to destroy—Motion to vary minutes of judgment.*—This was a motion to vary minutes of judgment delivered on the 17th of June, 1911, whereby the defendants in the action were ordered, among other things, to make and file within fourteen days after service of the judgment upon them a full and sufficient affidavit (to be made by the secretary or other proper officer), stating what arc lamps or parts of arc lamps were in their possession or power made in infringement of the said letters patent, and within four days from the filing of such affidavit to deliver up to the plaintiffs the arc lamps or parts of arc lamps that should by such affidavit appear to be in their possession or power by adding to such minutes immediately after the words "deliver up to the plaintiffs" the words "or in the presence of the plaintiffs or their agents destroy or otherwise make unfit for use."

The motion was refused.—*BRITISH WESTINGHOUSE ELECTRIC & CO. v. ELECTRICAL CO., Swinfen Eady, J.*, 689.

3. *Revocation—Manufactured exclusively or mainly outside the United Kingdom—Manufacture within United Kingdom by an infringer—Computation of extent of manufacture—Patents Act, 1907*, s. 27.—The fact that a patented article or process is being manufactured or carried on in this country by an infringer is immaterial when computing the extent of manufacture within the United Kingdom for the purposes of section 27, sub-section 1 of the Patents and Designs Act, 1907.—*RE FIAT MOTOR COMPANY'S APPLICATION, Parker, J.*, 64; 1911, 1 Ch. 66.

#### PAWNBROKER:—

*Lending money on bill of sale—Isolated transaction—Registration as moneylenders—Moneylenders Act, 1900* (63 and 64 Vict., c. 51), s. 6 (a).—A pawnbroker lent a person £50 on a bill of sale. There being no other evidence that the pawnbroker had made any other advance of money outside his business as a pawnbroker, it was

Held that, there being only evidence of one single transaction of moneylending, the pawnbroker was not carrying on the business of a moneylender, and need not be registered under the Moneylenders Act, 1900.

*Seemle*, where a person merely carries on the business of pawn-

broking (without violating the Acts relating to pawnbroking) he need not, on that account, be registered under the Moneylenders Act, 1900, even if he advances sums of more than £10.—*NEWMAN v. OUGHTON, K.B.D.*, 272; 1911, 1 K. B. 792.

#### PENSION:—

*Sequestration—Madras Civil Service Annuity—Assignability of annuity—(Indian) Pensions Act (No. XXIII. of), 1871*, ss. 11, 12.—*East Indian Annuity Funds Act, 1874* (37 Vict. c. 12).—Annuities to retired Indian civil servants, which have become payable out of the revenues of India by virtue of the East India Annuity Funds Act, 1876, are not thereby brought within the provisions of the Indian Pensions Act, 1871, but are assignable and liable to sequestration.—*KNILL v. DUMERGUE, C.A.*, 648.

#### PERPETUITY:—

*Rule against perpetuities—Limitations in strict settlement—Minority of tenants in tail—Trustees to enter into possession—Not limited to tenants in tail by purchase—Void for perpetuity.*—A provision in a will, creating legal limitations of realty in strict settlement, that during the minority of any tenant for life or tenant in tail under the will the trustees are to enter into possession or receipt of the rents and profits, is void as infringing the rule against perpetuities if it is not restricted to the minority of tenants in tail by purchase.—*RE EARL OF STAMFORD AND WARRINGTON, Warrington, J.*, 154; 1911, 1 Ch. 255.

See also Appointment, Easement.

#### POISONS:—

*Poisons and Pharmacy Act, 1908* (8 Ed. 7, c. 55).—*Person licensed to sell poison under the Act—Sale of poison by unlicensed assistant of such person—Liability of assistant to penalty.*—An unlicensed assistant of a person licensed under the Poisons and Pharmacy Act, 1908, to sell poisons, is liable to a penalty under the Pharmacy Act, 1868 (31 & 32 Vict. c. 121), s. 15, if he sells any poison or preparation containing poison as defined in the Poisons and Pharmacy Act, 1908, notwithstanding that he effects such sale on behalf of his master.—*PHARMACEUTICAL SOCIETY v. NASH, K.B.D.*, 156; 1911, 1 K. B. 520.

#### POOR LAW:—

*Settlement—Removal—Residence of legitimate child under sixteen years of age with deserted mother—Acquisition of settlement by residence—Poor Law Removal Act, 1865* (9 & 10 Vict. c. 66), ss. 1, 3.—*Poor Removal Act, 1848* (11 & 12 Vict. c. 111), s. 1.—*Divided parishes and Poor Law Amendment Act, 1876* (39 & 40 Vict. c. 61), ss. 34, 35.—The father of a legitimate child deserted his wife and child in 1888, and before the child reached the age of sixteen acquired a settlement in the parish of H. The wife and child continued to live together in the parish of N., where the father had deserted them, until 1900, when the child, then fourteen years of age, left N., and lived in various places without acquiring a settlement in any of them.

An order having been obtained by the guardians of a union (not comprising the parish of N.) for the removal of the child to the union comprising the parish of H., the Divisional Court (Darling, J., dissenting) held, following *West Ham Union v. Holbeach Union* (1905, A. C. 450 and *Fulham Union v. Woolwich Union* (1907, A. C. 255), that the order of the justices was wrong, and that the settlement of the pauper was in the parish of N. On appeal.

Held, that the decision of the Divisional Court (reported 103 L. T. 599; 9 L. G. R. 42) should be affirmed.—*KINGSTON-UPON HULL v. HACKNEY UNION, C.A.*, 289; 1911, 1 K. B. 748.

#### PRACTICE:—

1. *Action against Crown—Attorney-General defendant—Declaratory judgment—Question of public importance—Striking out statement of claim—R. S. C. XXV. 4—Finance Act, 1910—Form 4.*—An action may be maintained against the Attorney-General, as representing the Crown, even though the immediate object of the suit is to affect the Crown's rights in favour of the plaintiffs and there is no relief asked for except by way of declaration.

Ord. 25, r. 4, was not intended to take the place of a demurrer, and ought not to be applied to an action involving serious questions both of law and of general importance.—*DYSON v. ATTORNEY-GENERAL, C.A.*, 168; 1911, 1 K. B. 410.

2. *Administration—Sale of land—Confirmation by court—Approval of master—Order not entered—Adjournment to judge—Refusal to confirm.*—In an administration suit an estate was ordered to be sold. A contract was entered into, subject to confirmation by the court, and approved by the master, but before the order was passed and entered a third party, a creditor of the estate, offered to purchase the property at a higher price.



Upon summonses by the third party for liberty to attend proceedings under the administration order, and by the purchaser for the passing of the master's order.

Held, that the master's confirmation was ineffective until the order had been passed and entered, and that the judge had power to reopen the matter and refuse confirmation.

*Re Bartlett* (16 Ch. D. 561), considered.—*RE THOMAS, BARTLEY v. THOMAS, Warrington, J.*, 567.

3. *Concurrent suits—Palatine Court of Lancaster and Chancery Division—Injunction to restrain proceedings—Chancery of Lancaster Act, 1890 (53 & 54 Vict. c. 23)—Judicature Act, 1873 (36 & 37 Vict. c. 66).*—When an action has been begun in the Chancery Division and an action involving a similar question is commenced in the Palatine Court, a judge of the Chancery Division has jurisdiction to order the proceedings in the Palatine Court to be stayed.—*RE CONNOLLY BROTHERS, Park-r, J.*, 407; 1911, 1 Ch. 731.

4. *Discovery—Interrogatories—Action for false imprisonment and malicious prosecution—Reasonable and probable cause—Interrogatories as to what steps the defendants took to ascertain the truth of the information, and from whom—Inadmissibility of such questions as likely to bring third parties into litigation.*—In an action for false imprisonment and malicious prosecution the plaintiff sought to administer certain interrogatories. Two of these interrogatories were disallowed by the master, whose decision was upheld by the judge. In substance, the interrogatories asked what information the defendants had that induced them to prosecute the plaintiff for stealing gas, and what steps they took to ascertain whether the charge was true or not, and what inquiries they made, and what was the result of each such inquiry.

Held, by the full Court of Appeal (Kennedy, L.J., dissenting), that these two interrogatories had rightly been disallowed.—*MAAS v. GAS LIGHT AND COKE CO., C.A.*, 566; 1911, 2 K. B. 543.

5. *Discovery—Production of documents—Joint possession—Interrogatory as to contents of documents.*—A party cannot refuse to disclose the contents of relevant documents, though he may refuse to produce them on the ground that they are in the joint possession of himself and another person not a party to the action. Accordingly an interrogatory as to the contents of such documents will be allowed.—*RATTENBERRY v. MUNRO, Eve, J.*, 76.

6. *Indorsing writ after three days had elapsed from date of service with date of process—Defendant does not enter appearance—Case remitted to Sheriff's Court—Application to set aside verdict and judgment—R. S. C. IX. 15—Costs.*—Ord. 9, r. 15, directs that: "The person serving a writ of summons shall within three days at the most after such service indorse on the writ the day of the month and week of service thereof, otherwise the plaintiff shall not be at liberty in case of non-appearance to proceed by default . . . ." A writ was served on a defendant at his club by registered letter on the 23rd of November. On the 30th of November service was indorsed on the writ. No appearance was entered by the defendant, and the plaintiff, having signed judgment in default of appearance, the case was remitted to the sheriff's court for damages to be assessed. The defendants did not appear at the sheriff's court, and the jury awarded the plaintiff £1,500.

Held, that the service of the writ being void by reason of non-compliance with the above order as to indorsement, all subsequent proceedings were void, and must be set aside.—*HAMP ADAMS v. HALL, C.A.*, 647.

7. *Ord. XIV. 1—Liberty to enter judgment—Affidavit verifying cause of action—"Other person who can swear positively to the facts"—Solicitor of plaintiff.*—The plaintiff sued the defendants to recover principal and interest due under a bill of exchange payable on demand, and applied for judgment under ord. 14. The affidavit in support of the application was made by a member of the firm of solicitors who acted for him, and who swore to the facts, but did not state the means of his knowledge, nor that he was authorized to make the affidavit by the plaintiff, and made them on information supplied him for that purpose.

Held, that as the defendants admitted that the facts deposed to were true, the judge was right in accepting the affidavit as sufficient to support the summons.—*CHIRGWIN v. RUSSELL, C.A.*, 10.

8. *Originating motion placed in non-witness list—Order as to Supreme Court fees, 1884, item 52.*—Where, to suit the convenience of the court, an originating motion is directed to be placed in the non-witness list, no hearing fee ought to be demanded.—*RE WATSON & Co., Parker, J.*, 292.

9. *Receiver—Appointment by Chancery Division pending probate—Jurisdiction.*—The present practice is for the Chancery Division to entertain applications for the appointment of a receiver pending the grant of probate or letters of administration.—*RE WENGE, Eve, J.*, 553.

10. *Service—Personal service—Assault.*—The mere fact that an

order for discovery in the county court may be served upon the solicitor acting for the party against whom the order is made does not render the touching of such party by a process-server in the course of personal service of the order, an assault. Merely dropping a writ or order in the presence of the party to be personally served may or may not be good service according to the circumstances of the case.—*ROSE v. KEMPTHORNE, K.B.D.*, 126.

11. *Set-off—Counterclaim—Costs against damage—Discretion of court—R. S. C., LXV. 14.*—It is in the discretion of the court to allow a set-off of damages against costs, and such set-off will be allowed where it works no injustice between the parties.—*MEYNELL v. MORRIS, Eve, J.*, 480.

12. *Third party procedure—Fourth or subsequent party—Costs—R. S. C., XVI. 48, et seq.*—The third party procedure applies to a fourth party or any subsequent party against whom the third party claims indemnity, and consequently the court has jurisdiction to say how the costs of such party ought to be borne.—*KLAWANSKY v. PREMIER PETROLEUM COMPANY, Eve, J.*, 408.

13. *Transfer to county court—Equitable action—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 69.*—The court will not order the transfer of a Chancery action to the county court, where the hearing must take a considerable time and might prevent other litigants from getting a speedy determination of their causes.—*READING CORPORATION v. FEWSTER, Eve, J.*, 125.

14. *Trial with a jury—Claim and counterclaim—Where plaintiff succeeds on the claim and defendant on the counterclaim—"Event"—Counterclaim in excess of verdict on claim—Form of entry of judgment.*—In this action the plaintiff claimed damages for fraudulent misrepresentation, whereby she had been induced to purchase a business. The defendants denied the alleged fraud, and counterclaimed £90 15s. 9d. for stock-in-trade taken over by the plaintiff, and the plaintiff admitted a willingness to give the defendant "credit in account against the damages claimed" for that amount. The jury awarded a verdict for the plaintiff, with £50 damages, and found for the defendant on the counterclaim. Coleridge, J., exercising the discretion given to him by ord. 21, r. 17, interpreted the finding of the jury as a verdict for the defendant for £40 15s. 9d., with costs.—*SHARPE v. HAGGITH, K.B.D.*, 669.

See also County Court, Estoppel.

## PRINCIPAL AND AGENT:—

1. *Clerk—Claim by client on solicitor for clerk's fraud—Client conveys property to clerk—Limitation of agent's authority.*—The plaintiff, a widow lady, consulted the defendant's managing clerk as to the sale of certain freehold property, and as to a mortgage, and in her evidence alleged that, through his clerk, she had instructed the defendant to act as solicitor for her. The clerk advised her to convey the property into his name, and this the plaintiff did. He also got in the mortgage money. The frauds being discovered, the plaintiff sued the solicitor for delivery up of the deeds and repayment of the mortgage.

Held, that as the managing clerk had transferred the property of the client into his own name, and had disposed of it for his own purposes, his principal was not responsible to the client for the loss sustained thereby.—*LLOYD v. GRACE, SMITH & Co., C.A.*, 461; 1911, 2 K. B. 489.

2. *Underwriting business—Revocation of agent's authority—Estoppel.*—An underwriter employed an agent to perform underwriting business for him for a definite period, for which he gave him a written authority. On the expiration of this period the underwriter gave no notice at Lloyd's of the determination of his agent's authority, and the agent continued to insert his former principal's name in policies. In an action against the underwriter in respect of certain policies,

Held, that the underwriter was estopped from denying the authority of the agent to act for him.—*WILLIS & Co. v. JOYCE, K.B.D.*, 443.

See also Company.

## PROBATE:—

1. *Administration bond—Breach of condition to well and truly administer—Sufficient proof of breach—Assignment of bond to creditor by Probate Court—Assignment under order of registrar and not under order of judge—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 83—Liability of sureties—Creditors not suing on bond as trustees—Court of Probate Act, 1858 (21 & 22 Vict. c. 95), ss. 23, 24.*—By the terms of an administration bond the administratrix to whom the grant of probate with the will annexed had been made was, among other things, to well and truly administer the personal estate and effects of the deceased. The plaintiffs, who were creditors of the estate being administered, alleged that

the administratrix had not well and truly administered the said estate, but that she had retained a sum of £173 1s. 7d. that came to her hands as administratrix thereof, and had altogether failed to obey sundry orders of the court relating to such sum, whereby the plaintiffs had been unable to recover their debt from her. On the 26th of October, 1910, by an order of one of the Registrars of the Probate Division, dated the 21st of October, 1910, purporting to be made in pursuance of section 83 of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), the administration bond was assigned to the plaintiffs, and they were suing the defendants, who were the sureties to the bond. The defendants now set up the following three defences: (1) That the plaintiffs were not entitled to sue in the form in which they were suing, but could only sue as trustees for the creditors of the estate. (2) That the bond had not been properly assigned in accordance with the provisions of section 83 of the Court of Probate Act, 1857, in that the order to assign it had been made by a registrar, and not by the judge. (3) That the plaintiffs had not proved the breach of the condition to well and truly administer. The defendants also alleged, against the third party, a verbal agreement to indemnify them. The defendants failed in all their contentions.

*Note.*—This action was before the court in May last, when it was adjourned to allow the plaintiffs to amend their pleadings, and allege particular breaches of the condition in the bond to well and truly administer the estate in accordance with the provisions of section 8 of the Statute 8 & 9 Vict. 3, c. 11 (see 55 SOLICITORS' JOURNAL, 521).—COPE v. BENNETT (No. 2), *Swinfen Eady, J.*, 725.

2. *Grant of administration to a creditor—Next-of-kin not cited—Court of Probate Act, 1857 (20 & 21 Vict. c. 77, s. 73).*—Where a creditor moved for a grant to the estate of a deceased debtor the court allowed a grant to go under section 73 of the Court of Probate Act, 1857, without citing the next of kin on the applicant undertaking to bring the balance of the estate into court.—IN THE ESTATE OF HEERMAN, *P.D.*, 30.

3. *Grant of administration to public trustee—Probate Act, 1857 (20 & 21 Vict. c. 77), ss. 73 and 81—Public Trustee Act, 1906 (6 Ed. 7, c. 55), s. 6, sub-section 4; s. 11, sub-section 4.*—The court has power to make a grant of administration to the Public Trustee, passing over the heir-at-law, widow and next of kin of deceased. By section 11, sub-section 4, of the Public Trustee Act, 1906, the Public Trustee is not required to give a bond or security.—IN THE ESTATE OF WOOLLEY, *P.D.*, 220.

4. *Murdered wife—Grant of letters of administration—Husband's representative passed over—Court of Probate Act, 1857—Rights of convicted felon—Copy of conviction—Admissibility.*—Where a man, convicted of the wilful murder of his wife, had appointed a person his executrix and universal legatee, who, claimed to administer the murdered wife's estate, and as legatee to be entitled to the property of the murdered wife, the court passed over, and declined to appoint the executrix administrator of the deceased woman's estate.

A copy of the conviction of a felon is admissible in evidence, not merely as proof of the conviction, but also as presumptive proof of the commission of the crime.—IN THE ESTATE OF CRIPPEN, *P.D.*, 263; 1911, P. 108.

5. *Two wills—Precatory trust in earlier document—Party's interest questioned.*—Where a testator, by a will executed in 1906, bequeathed all his estate absolutely to his wife, and further said, "It is my earnest wish and desire that my wife should, during her lifetime, pay out of my estate" a certain weekly sum to his sister, it was

Held, that no precatory trust was created, and that the sister (plaintiff in the action) having no interest under the will, could not dispute the validity of a later document.—IN THE GOODS OF HANMER, *P.D.*, 537.

#### PUBLIC AUTHORITIES PROTECTION ACT:—

*Notice of special defence—"A Statute of Limitations"—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61)—County Court Rules, 1903 and 1904, ord. 10, rr. 14 and 18 (1).*—The Public Authorities Protection Act, 1893, is a statute of limitations, for it imposes a limitation of time on an existing cause of action, and there is nothing in the rest of the Act to prevent its being so considered.

Accordingly, a public authority wishing to plead the Act as a special defence in the county court do so sufficiently if they plead "that the claim for which the defendants are summoned is barred by a statute of limitations."—GREGORY v. TORQUAY CORPORATION, *K.B.D.*, 582.

PUBLIC TRUSTEE.—See Probate, Trustee.

#### RAILWAY:—

1. *Level crossing over—Vehicular traffic—Arrangements for—Duty of railway company—Negligence.*—A man driving a horse and cart on a level crossing over a railway was run into by a train and killed. It appeared that the driver of the train carried out the instructions of the company, and that he was not himself guilty of negligence. A jury found that the crossing was habitually used for vehicular traffic to the knowledge of the defendants without hindrance by them, that the defendants were guilty of negligence in failing to provide sufficient safeguards for vehicular traffic, having regard to the character of the neighbourhood, and that the accident was the result of the defendants' negligence.

Held, that where there was a locality of this kind, it was a question for the jury whether in all the circumstances the railway company took proper precautions, and as there was evidence to support the verdict of the jury, it should stand.

Query whether a level crossing for vehicular traffic over a railway can be dedicated by a railway company as a highway.

*Per* Pickford, J.—There was a duty upon the railway company to see that there was nothing in the nature of a trap at the crossing, and perhaps also the obligation of taking proper precautions for the protection of persons using the crossing.—JENNER v. SOUTH EASTERN RAILWAY, *K.B.D.*, 553.

2. *Rates—Traders' vans—Deficiency of railway company's vans—Reasonable facilities—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 2.*—Held, that where there is a shortage in a railway company's trucks, and a trader asks to have his goods carried in his own trucks or vans, he is in such circumstances asking for a reasonable facility within section 2 of the Railway and Canal Traffic Act, 1854, and is entitled in such circumstances to have the charge for the conveyance reduced.

There is, however, no general obligation on a railway company to haul the ordinary goods of a trader in the latter's vans.

*Semble*, that a railway is bound to provide all "reasonable facilities" to convey the trader's goods in covered vans or other suitable vehicles, the trader to be at liberty to use his own trucks if a suitable number of trucks is not from time to time provided by the railway company, and further that in this case "sheeted" trucks should be admitted to be suitable trucks.—SPILLERS v. GREAT WESTERN RAILWAY, *C.A.*, 75; 1911, 1 K. B. 386.

3. *Support—Lateral support from minerals more than forty yards from railway—Common law right to support—Railways Clauses Act, 1845, ss. 78-85.*—The rights given to a railway company by section 78 of the Railway Clauses Act, 1845, are in substitution for the common law right of support within the prescribed distance of forty yards from the railway, but outside that distance they have a common law right of lateral support. They do not, however, by purchasing and becoming owners in fee of one of the upper seams of coal acquire a common law right of support within the forty yards limit.—LONDON AND NORTH WESTERN RAILWAY v. HOWLEY PARK COAL AND CANAL CO., *C.A.*, 459.

#### RATING:—

1. *Rateable value—Quinquennial and provisional valuation lists—Limits of operation—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47 (8)—Construction.*—The plaintiff was the occupier of licensed premises within the metropolis, and under the London Government Act, 1899, the defendants were the overseers for the parish. In a provisional list (made under section 47 of the Valuation (Metropolis) Act, 1869), which came into operation on the 30th of June, 1910, the rateable value of the premises was assessed at £268. In the quinquennial list, which was sealed on the 30th of May, 1910, approved by the Assessment Committee the 31st of October, 1910, and which came into force on the 6th of April, 1911, the rateable value of the premises was assessed at £150. The question was whether the provisional list operated after the 6th of April, 1911.

Held, that the quinquennial list was "made" in accordance with the meaning of the word in section 47, sub-section 8, after the provisional list, and therefore superseded it on 6th of April, 1911.—PARRISH v. HACKNEY CORPORATION, *Warrington, J.*, 670.

2. *Sewers—Partly above and partly below ground—Payments for right of entry—"Valuable" occupation—Rateability—West Kent Main Sewerage Act, 1875 (38 & 39 Vict. c. cxxvi.), ss. 53, 55.*—A main sewer is rateable, whether constructed over ground or under ground, whenever there is evidence that the occupation thereof is "valuable" according to the meaning of that term within the authorities dealing with rating.—WEST KENT MAIN SEWERAGE BOARD v. DARTFORD UNION, *H.L.*, 363; 1911, A. C. 171.

#### RECEIVER:—

*Death of sole defendant after motion—Abatement.*—On the death of a sole defendant after a motion has been launched for a receiver

in respect of property alleged to be in his hands as trustee, the court has jurisdiction, in spite of the abatement of the action caused by his death, to appoint a receiver to protect the property pending the constitution of a representative of the deceased.

*Re Parker, Cash v. Parker* (1879, 12 Ch. D. 293) followed.—*Rx* CLARK, CLARK v. CLARK, *Warrington, J.*, 64.  
See also Practice.

#### RESTRAINT OF TRADE:—

1. *Advertising agent—Manager—Covenant not to engage in similar business in United Kingdom—Restraint too wide—Special circumstances.*—A covenant by an employee of an advertising agent that he would not carry on, or be engaged directly or indirectly in any similar business in any part of the United Kingdom, is too wide, and therefore void.—*STUART & SIMPSON v. HALSTEAD, Eve, J.*, 598.

2. *Covenant not to carry on business—Prohibited area—“Provision merchant”—Manufacture of margarine.*—The defendant covenanted not to carry on the business of a provision merchant within a certain area. Subsequently he threatened to manufacture and sell margarine within the prohibited area.

Held, that the manufacture and sale of margarine by the defendant was not a breach of the covenant.—*LOVELL AND CHRISTMAS v. WALL, Eve, J.*, 92.  
See also Contract, Solicitor.

#### REVENUE:—

1. *Estate duty—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 14 (1)—“Sum charged on” estate—Covenant in daughter's settlement—Amount also charged on realty—Trustees not to be bound to resort in first instance to the charge—“Express provision to the contrary”—Estate duty paid out of personality—Its incidence as between executors and trustees of the settlement.*—Trustees of a settlement containing a covenant to pay a sum of money, also thereby charged upon hereditaments of the covenantor, are “persons entitled to a sum charged on” property within the meaning of section 14 (1) of the Finance Act, 1894, and as such are bound to pay the proper rateable part of the estate duty in respect of the property comprised in their security, even though the covenantor's personal estate proves ample to satisfy the covenant and all estate duty. Further, a proviso in the settlement that the trustees are not to be bound in the first instance to resort to the hereditaments charged is not “an express provision to the contrary” within the meaning of the section.

*Alexander's Trustees v. Alexander's Trustees* (1910, Sessions Cases 637) followed.—*RE DIXON-HARTLAND, Swinfen Eady, J.*, 312.

2. *Estate duty—Property subject to general power of appointment—Power not exercised—Will—Direction by donee to pay her “testamentary expenses”—Payment and recovery of duty by executors of donee—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 2 (1) (a), 6 (2), 9 (1).*—A donee of a general power of appointment by deed or will died without exercising the power. By her will she expressly declared that she did not desire to exercise it; and she directed her executors to pay her testamentary expenses. The executors of the donee paid estate duty on the unappointed fund, as by section 6 (2) of the Finance Act, 1894, they were bound to do.

Held, that the direction to pay testamentary expenses did not debar the executors from recovering the duty on the unappointed fund out of that fund.

*Re Clemow, Yeo v. Clemow* (48 W. R. 541; 1900, 2 Ch. 182) explained.—*PORTE v. WILLIAMS, Joyce, J.*, 45; 1911, 1 Ch. 188.

3. *Income tax—Brewery company—Balance of profits or gains—Deductions—“Tied” houses let to tenants—Compensation levy—Landlord's share—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D.—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 2, Sched. D.—Licensing Act, 1904 (4 Ed. 7, c. 23), s. 3.*—The surveyor of taxes appealed from an order of the Court of Appeal (reported 1909, 2 K. B. 912; 53 SOLICITORS' JOURNAL, 696; 78 L. J. K. B. 1089), whereby it was held that the compensation levy imposed by section 3 of the Licensing Act, 1904, upon a brewery company who are landlords of tied houses is an expense incurred for the purposes of their trade in arriving at the assessable amount of such profits for the purposes of the Income Tax Acts.

The House being equally divided in opinion, the appeal did not prevail, and following the rule *semper presumitur pro negante* stood dismissed, no order for costs being made.—*SMITH (Surveyor of Taxes) v. LION BREWERY CO., H.L.*, 269; 1911, A. C. 150.

4. *Land valuation—Requisitions by Commissioners of Inland Revenue—Finance (1909-10) Act, 1910 (10 Ed. 7, c. 8), ss. 26, 31—Form VIII. Land—Unauthorized notice—Action against the*

*Crown—Jurisdiction—Declaratory judgment—R. S. C. XXV. 4, 5.*—By a notice (Form VIII. Land) purporting to be issued by the Commissioners of Inland Revenue under the Finance (1909-10) Act, 1910, the plaintiff was required to give the names and addresses of persons to whom he paid, or for whom, as agent, he received rent in respect of any land situate in the parish or place of P.; in an annexed form to give the description and situation of the land, and to return the form, when completed, to the land valuation officer, on pain of a penalty of £50. The plaintiff refused to supply the information, and instituted an action against the Attorney-General, seeking a declaration that the notice was unauthorized, and that he was not bound to comply therewith.

Held, that the notice was unauthorized by section 31 of the said Finance Act, and therefore void; that the court had power in the action to make a declaration to that effect; and that, under the circumstances of the case, such a declaration should be made.

*Dixon v. Attorney-General* (55 SOLICITORS' JOURNAL, 168; 1911, 1 K. B. 410) followed.—*BURGHES v. ATTORNEY GENERAL, Warrington, J.*, 520.

5. *Licence—Male servant—Gardener—Taxable persons—Revenue Act, 1869 (32 & 33 Vict. c. 14), ss. 27, 19 (3)—Revenue Act, 1876 (39 Vict. c. 16), s. 5.*—Section 5 of the Inland Revenue Act, 1876, which enacts that a servant employed in certain capacities shall not be deemed to be otherwise employed because he is occasionally or partially employed to do something else, only applies to a person who is not taxable, but who happens to do duties which, if they were his ordinary duties, would render him taxable.—*DUKE OF BEDFORD v. LONDON COUNTY COUNCIL, K.B.D.*, 423.

6. *Stamp duty—Estate duty—Voluntary disposition—Finance (1909-10) Act, 1910 (10 Ed. 7, c. 8), ss. 59, 74, sub-sections 1, 5.*—When property has been conveyed for a consideration less than its full value, the fact that stamp duty has only been paid in respect of the consideration mentioned in the conveyance, and not (as required by section 74 of the Finance Act, 1910) in respect of the value of the property, will not affect a subsequent purchaser for value.

Estate duty will not be payable under section 59 of the said Act in respect of property which has been the subject of a *bond-fide* bargain and conveyance, even if the consideration be less than the full value of the property.—*RE WEIR & PITT'S CONTRACT, Warrington J.*, 536.

#### RIVER:—

1. *Higher and lower riparian owners—Interference with bed of river—Injunction.*—A riparian owner is not entitled to alter the level of a river by removing obstructions which by lapse of time have become embedded and consolidated in and form part of the bed of the river, even although the natural bed of the stream has been altered by the foreign substances being placed or thrown into it or washed down the river in time of storm, if thereby he diminishes or increases the flow of water which a millowner lower down has been enjoying owing to the diversion of the stream or the alteration in its level by the obstructions.

Decision of Divisional Court (27 Times L. R. 483) reversed.—*FEAR v. VICKERS, C.A.*, 688.

2. *Pollution by sewage—Nuisance—Trespass—Injunction.*—The owner of land on the banks of a river can maintain a suit to restrain the pollution of the water of the river without showing that the pollution has caused him actual damage.—*JONES v. LLANRWST URBAN COUNCIL, Parker, J.*, 125; 1911, 1 Ch. 393.

#### SALE OF GOODS:—

1. *C.I.F. contract—“Net cash”—Tender of shipping documents—Payment—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 28, 32, 34.*—Under a c.i.f. contract, which did not expressly state in terms that cash was payable for the goods on delivery of shipping documents, the buyer was justified in refusing to pay cash until the goods had arrived at their final destination, and he had had an opportunity of inspecting them, although the words “terms net cash” were used in the contract.

Decision of Hamilton, J. (55 SOLICITOR'S JOURNAL, 47), reversed.—*BIDDELL BROS. v. CLEMENS AND CO., C.A.*, 383; 1911, 1 K. B. 934.

2. *Commercial traveller—Cash instead of crossed cheques—Scope of authority—Fraud by traveller—Innocent party to fraud—Ambiguous notice to third party of agent's limited authority.*—A firm employed a traveller named Cohen to call on customers with samples of sponges. It was his duty to fix the price, and to forward to his employers a sale sheet containing particulars of the transaction. The firm then would send the customer an invoice and a monthly statement of account would follow. The “statements of account” all contained three printed express intimations to customers:—(1) That cheques were to be crossed; (2) All



cheques to be made payable to the firm; and (3) "No receipt valid unless on the firm's printed form, to be attached hereto." The appellants alleged that with the exception of three transactions invalid in this case (and one since discovered) they had done business on this footing with the respondents for ten years. In October, 1905, October, 1907, and May, 1908, the traveller, by fraudulent representation, induced the respondents to give him the price of these three parcels of sponges which he had sold to them below cost price. On the third occasion the respondents paid the traveller £120 in cash. The present proceedings related to the last payment only. The Court of Session assailed the respondents from the conclusions of the action.

Held, that the decision appealed from was right, as although it was clear the traveller had no actual authority to receive payment, except by crossed cheque, it was not established that the respondents, whose good faith and integrity were undisputed and indisputable, had express notice that the traveller could only receive payment by crossed cheque.

Decision of Second Division of Court of Session (1909, 2 Scots L. T. 24) affirmed.—*INTERNATIONAL SPONGE IMPORTERS v. WATT & SONS, H.L.*, 422; 1911, A. C. 279.

3. *Goods not according to contract—Conditions of sale—Non-warranty clause in sold note—Sale of Goods Act, 1893, s. 53.*—The appellants purchased from the respondents a quantity of seed which was represented in perfect good faith by them to be common English sainfoin. As a matter of fact it was giant sainfoin. The sold note was indorsed with the following condition: "Sellers give no warranty express or implied as to . . . any grain, seed . . . or any other article sold by them . . . The seed was duly delivered and was equal to sample. The appellants re-sold a portion of the seed, and the mistake having been discovered by the purchaser, they settled a claim for damages for breach of warranty, and claimed to recover the amount so paid in settlement, from the respondents.

Held, that the respondents were liable.

Decision of Court of Appeal (Moulton, L.J., dissenting) (reported 1910, 2 K. B. 1003) reversed and appeal allowed with costs.—*WALLIS, SON, & WELLS v. PRATT & HAYNES, H.L.*, 496; 1911 A. C. 394.

#### SCHOOL:—

1. *Elementary—Order given by teacher to scholar to poke fire in teacher's private room—Injury to child—Finding by jury that order in circumstances was negligence—Liability of education authority for act of teacher.*—The plaintiff, a girl of fourteen, was a pupil at an elementary public school, was told by her teacher to poke the fire and draw the damper of the stove in a room which she and other teachers had their meals. In carrying out the teacher's orders the girl's clothes caught fire and she was seriously injured. In an action for damages for negligence the jury awarded the plaintiff £300 damages, and the learned judge, on further consideration, gave judgment for her for that amount against the teacher personally, but as in his opinion the local education authority were not responsible for a teacher's negligence in a matter not connected directly with her duties as teacher, they were entitled to judgment. The plaintiff appealed, asking that the local authority should be held liable and judgment entered against them as well as the teacher.

Held, that the order was an act by the teacher within the scope of her authority to give a pupil, as the teacher of the class, of which the plaintiff was one, and that as the relationship of master and servant existed between the local education authority and their teachers, they were liable for this wrongful act of the teacher.

Appeal allowed with costs, decision of Lawrance, J. (9 L. G. R. 156, 27 T. L. R. 165), reversed.—*SMITH v. MARTIN, C.A.*, 535.

2. *Endowed—Headmaster—Powers under scheme under Act—Power, action (bona fide) to expel scholar—Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 45.*—Clause 39 of a scheme made under the Endowed Schools Act, 1869, with regard to an endowed school, which, by section 45 of that Act, having been approved by Her Majesty in Council, was to have full operation and effect as if enacted in that Act, provided that, subject to any rules prescribed by or under the authority of the scheme, the headmaster was to have under his control generally "the whole internal organization and management and discipline of the school, including the power of expelling boys from the school or suspending them from attendance thereat for any adequate cause to be judged by him."

A boy at this school who had obtained a Brackenbury scholarship under the terms of the scheme was expelled by the headmaster, it being alleged that this boy had stolen postage stamps belonging to another boy. The father of the boy brought an action for breach of contract against the headmaster in failing to keep his son at the school. It was admitted that the headmaster had not acted *malà fide* in expelling the boy. A jury in the county court found

that the headmaster had not acted unreasonably in expelling the boy—damages £50. Judgment was entered for the plaintiff.

Held, that whether or no there was any implied contract between the parent and the headmaster, as the headmaster had acted *bona fide*, he was justified by the terms of clause 39 of the scheme. If there was an implied contract between the parties it was subject to the terms of clause 39 of the scheme, which bound the parent, and not merely the headmaster, in his relations with the governors of the school. Judgment therefore must be entered for the defendant.—*WOOD v. PRESTWICH, K.B.D.*, 292.

3. *Non-provided school—Management—Appointment of caretaker and cleaner—Elementary Education Act, 1902 (2 Ed. 7, c. 42), s. 7 (1) (7).*—The expense of employing persons as caretakers and cleaners in non-provided schools is by the Education Act, 1902, cast upon the local education authority.

Held, that the local education authority were entitled to select and appoint persons to render such services, and not the managers.

Decision of Hamilton, J. (1911, 1 K. B. 322; 8 L. G. R. 1059) reversed.—*GILLOW v. DURHAM COUNTY COUNCIL, C.A.*, 725.

See also Education.

#### SETTLED LAND:—

1. *Lease by tenant for life without impeachment of waste—Breach of lessee's covenant to keep in repair—Sum recovered in respect of such breach—Whether trustees or tenant for life entitled to such sum.*—Trustees for the purposes of the Settled Land Acts ought not to consent to the grant of a lease under those Acts which does not contain proper and usual covenants to repair, but if a lease is duly granted under the Acts, damages for breach of the lessee's covenant to repair belong, not to the trustees, but to the tenant for life if he is unimpeachable for waste.—*RE LACON'S SETTLEMENT, C.A.*, 551.

2. *Person having powers of tenant for life—Executory gift over—Infants—Settled Land Act, 1882, s. 58, subsection 1 (ii).*—A testator by his will devised certain freehold property upon trust for his daughter for life, and after her death for her children who, being sons, should attain twenty-one, or, being daughters, should attain that age or marry. The daughter died in July, 1910, leaving four children, the eldest of whom attained twenty-one in February, 1909.

Held, that the eldest child was entitled to the entirety of the rents until the next child attained a vested interest, and therefore was a person having the powers of a tenant for life under the Settled Land Act, 1882, s. 58, sub-section 1 (ii).—*RE WALMSLEY'S SETTLED ESTATES, Eve, J.*, 600.

3. *Person having powers of tenant for life—Trust for accumulation until life tenant attains twenty-seven—Settled Land Act, 1882, (45 & 46 Vict. c. 38), ss. 2 (7), 58 (1) (vi).*—A testator devised real estate in settlement, and directed his trustees to accumulate the rents and profits and to pay an annuity to A., the first life tenant, until A. should attain the age of twenty-seven years. The testator did not give his trustees any powers of letting. At the age of twenty-five A. desired to exercise the powers of a tenant for life under the Settled Land Acts.

Held, that he was entitled to exercise such powers.

*Re Martyn, Coode v. Martyn* (1900, 69 L. J. Ch. 733) followed. *Re Strangways, Hickley v. Strangways* (1886, 35 W. R. 83; 34 Ch. D. 423) distinguished.—*RE LLEWELLYN'S ESTATE, Joyce, J.*, 254; 1911, 1 Ch. 451.

4. *Person having powers of tenant for life—Trust to pay residue of income to wife during widowhood—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 58.*—A testator devised his real estate upon trust out of the rents and profits and until the death or marriage again of his wife to pay certain annuities and the expenses of management of his estate, and to pay the ultimate residue of the rents and profits to his wife during widowhood.

Held, that the widow was a person having the powers of a tenant for life under the Settled Land Act, 1882, s. 58, sub-section 1 (ix).—*RE SUMNER'S SETTLED ESTATES, Eve, J.*, 155; 1911, 1 Ch. 315.

#### SETTLEMENT:—

1. *Annuity—Charge of annuity on income or corpus—Direction to pay annuity out of income—Gift over "subject thereto."*—Where a settlement contained a trust for the payment of an annuity out of income, followed by a gift over of the corpus of the settled property "subject thereto."

Held, that the annuity was charged on the corpus of the settled property.

*Re Bigge* (51 SOLICITORS' JOURNAL, 410; 1907, 1 Ch. 514) overruled.—*RE WATKINS' SETTLEMENT, C.A.*, 63.

2. *Annuity—Direction to pay out of income—Charge on corpus—Continuing charge on income.*—The trustees of a settlement were directed to pay an annuity out of income, or such of it as

should exist, and subject thereto to stand possessed of the trust funds in trust for the persons therein named absolutely. The income was insufficient to pay the annuity.

Held (following *Re Boden* (1907, 1 Ch. 132)), that the annuity could not be charged on corpus, nor was it a continuing charge on the income.—*RE BOULCOTT'S SETTLEMENT, Parker, J.*, 313.

3. *Covenant to settle after-acquired property—Contingent interest—Falling into possession during coverture.*—A marriage settlement contained a covenant by the wife, that if she should at any time during the coverture become entitled in any manner, and for any estate or interest, to any real or personal property, it should be settled. At the date of the marriage she was entitled to a contingent interest which fell into possession during the coverture.

Held, that the interest was caught by the covenant.

*Archer v. Kelly* (1 Dr. & Sm. 300) followed.—*RE WILLIAMS' SETTLEMENT, Eve, J.*, 236; 1911, 1 Ch. 441.

4. *Forfeiture—Gift of income—Until event depriving beneficiary of same—Divorce—Order of Divorce Court extinguishing interest.*—Under a marriage settlement a husband had a life interest until some event happened which would deprive him of the right to receive the same or any part thereof. He was divorced, and by an order of the Probate Court his life estate was extinguished until his youngest child should attain twenty-one.

Held, that the order operated as a forfeiture.—*RE CAREW'S SETTLEMENT, Eve, J.*, 140.

5. *Forfeiture of life interest—Power of appointment—Destination of income until appointment.*—Under a marriage settlement the trust funds were settled upon the husband for life or until bankruptcy, and subject thereto as he should appoint, and in default of appointment, to the children of the marriage. The husband became bankrupt, and made no appointment.

Held, that until an appointment by the husband, the income during the residue of his life went to the children of the marriage.—*RE MASTER'S SETTLEMENT, Eve, J.*, 170; 1911, 1 Ch. 321.

6. *Tenant for life and remaindermen—Capital or income—Bonus dividend—Option to take new shares.*—A company resolved to pay a bonus dividend to its shareholders, and gave them the option of taking new shares fully paid instead of the dividend in cash. The trustees of a settlement, who were registered shareholders, exercised the option and took new shares, which were of greater value than the dividend.

Held that the tenant for life was entitled to the cash dividend, but the value of the shares in excess of that sum was capital.

*Bouch v. Sproule* (12 App. Cas. 385) distinguished. *Re Northage* (60 L. J. Ch. 488) followed.—*RE HUME NISBET, Eve, J.*, 536.

## SHIP:—

1. *Bill of lading—Lien—Unsatisfied freight due to limited company—Further shipment by receiver and manager of company—Claim of shipowners to exercise lien, as against receiver and manager.*—A receiver and manager of a company appointed in a debenture-holders' action by the court, shipped a consignment of goods under a bill of lading, which named the company (care of their agents abroad) as consignees. The bill of lading contained a clause expressly stating that the shipowners should have a lien on goods shipped in respect not only of the freight on that shipment, but also on any previously unsatisfied freight, due either from shippers or consignees to them. Unsatisfied freight was due from the company to the shipowners for shipments from the company to their agents prior to the appointment of the receiver.

Held (Lord Shaw and Lord Mersey dissenting), that the shipment by the receiver of the company's goods did not give a right to the shipowners to exercise a lien on those goods in respect of previous unpaid freight.

*Seemle*, a receiver, without the leave of the court, may not bind debenture-holders by granting a lien on the goods in respect of previous unsatisfied freight due from the company, since the effect of such a proceeding would be to place the shipowners in a better position than the other unsecured creditors of the company.

*Per Lord Mersey*: Mr. Whinney was appointed by the court to carry on the business. He was the agent neither of the debenture-holders nor of the company. If he provided the money in order to free the goods from a lien, which as against the company he ought not to have created, he would not get the amount allowed in his accounts by the court, and the company would be none the wiser.

Decision of Court of Appeal (Fletcher Moulton, L.J., dissenting) (54 SOLICITORS' JOURNAL, 736; 1910, 2 K. B. 813) affirmed.—*MOSS STEAMSHIP CO. v. WHINNEY, H.L.*, 631.

2. *Bill of lading—Receipt of goods by bill of lading holder—Incorporation of conditions of charter party—Discharge of cargo—Demurrage—Arbitration clause.*—A cargo of wood was shipped on a vessel, the charter containing a demurrage clause, certain

exceptions and conditions, and a submission to arbitration as to "any dispute or claim arising out of any of the conditions" of the charter party. A bill of lading was given to the shipper which contained the following terms:—"He or they" [*i.e.*, the shipper or his assigns], "paying freight for the said goods, with other conditions as to charter," and in the margin was written in ink, "Deckload at shipper's risk and all other terms and conditions and exceptions of charter to be as per charter party, including negligence clause." The bill of lading holders applied to stay proceedings instituted by the shipowners under the arbitration clause.

Held, that the arbitration clause was not applicable to the dispute between the shipowners and the holders of the bill of lading.

Decision of Court of Appeal, *sub nom.* The Portsmouth (1911, 1 K. B. 54; 104 L. T. 10) affirmed.—*T. W. THOMAS & CO. v. PORTSEA STEAMSHIP CO., H.L.*, 615.

3. *Charter-party—"Six or seven consecutive voyages during 1910"—Construction.*—The plaintiffs chartered a ship under a charter-party which contained the following terms:—"This charter to remain in force for six or seven consecutive voyages (in charterer's option) during 1910. . . . Steamers have liberty to load homeward cargoes to U.K. or Continent. Steamers to have liberty to dry dock." On the ship's arrival at the loading port for the first voyage the charterers were unable to load her owing to a strike, and, although she arrived on the 3rd of January, there would have been no cargo available until the 11th of January. The ship, accordingly, did not load at that port, but proceeded to South Wales, where she loaded a cargo, which was carried to Italy, whence she returned to load under her original charter. The consequence was that she did not get home from her sixth voyage until after the 6th of January, 1911, when the charterers purported to exercise their option to load for seven voyages.

Held, that the words "during 1910" were words of description and protection for both parties, the one being only bound to load, and the other only bound to supply, the steamer during 1910.

*Pope v. Davidge* (10 Ex. 73) not followed.—*DUNFORD & CO. v. CIA MARITIMA UNION, K.B.D.*, 421.

4. *Collision—Damage—Both ships to blame—Limitation of liability—Admission and pleadings—Cargo owner—Division of loss—Rule in force in the Court of Admiralty—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-section 9.*—The Admiralty rule as to division of loss where both vessels which have been in collision are held in default precludes the owners of the cargo laden on one of the ships recovering more than one half their loss from the owners of the other vessel.

So held, affirming the decision of the Court of Appeal (reported 1910, P. 249).—*ASTRAL SHIPPING CO. v. OWNERS OF "TONGARIRO," H.L.*, 138; 1911, A. C. 16.

5. *Towage—Sufficiency of towing gear—Exception clause—Alleged warranty that the tug would be properly equipped for services to be rendered.*—The defendants, who were tugowners, undertook to tow the plaintiffs' vessel from Birkenhead to the Canada Dock, Liverpool. The contract of towage was verbal, but was subject to the ordinary condition inserted in towage contracts, which was as follows: "The tugowners are not to be responsible for any damage to the ship they have contracted to tow arising from any perils or accidents of the seas, rivers or navigation, collision, stranding or arising from towing gear (including consequent defect therein or damage thereto), and whether the perils of the things above mentioned or the loss or injury therefrom be occasioned by the negligence, default, error in judgment of the pilot, master, officers, engineers, crew or other servants of the tugowners."

Held, that the clause did not exempt the defendants in respect of damage to the plaintiffs' ship arising from a defect or inefficiency existing in the tug, before the towage began.

Decision of the President (reported 1911, P. 23, 27 T. L. R. 52) affirmed.—*"THE WEST COCK," C.A.*, 329; 1911, P. 23.

## SOLICITOR:—

1. *Agreement by clerk not to carry on the profession of a solicitor—Prohibited area—Office outside area—Addressing letters within area.*—The defendant, on entering the plaintiff's service, agreed that he would not at any time carry on the profession of a solicitor either directly or indirectly within a prohibited area. After leaving the plaintiff's service the defendant opened an office outside the prohibited area. On one occasion he was consulted by a client who lived within the area, and wrote letters in connection with the matter both to the client and to another person who lived within the area.

Held, that this was not such a breach of the agreement as to justify the court in granting an interlocutory injunction.

Decision of Eve, J., reversed.—WOODBRIDGE & SONS v. BELLAMY, C.A., 204.

2. *Agreement of service—Restrictive undertaking—Carrying on the profession of a solicitor—Construction—Breach—Injunction.*—The defendant had entered the employment of the plaintiff, a solicitor, under an agreement which prohibited him from practising or acting as a solicitor, solicitor's clerk, or conveyancer within a certain area during, and for a certain time after leaving, the employment. The defendant, after the employment was determined, did one act which was the act of a solicitor within the area, and wrote several solicitor's letters to persons within the area.

Held, that the covenant must be construed to mean substantially acting as a solicitor, and that there had been no breach of the agreement, and that an injunction ought not to be granted.—FREEMAN v. FOX, Warrington, J., 650.

3. *Bill of costs—Delivery of—Expiration of one month after—Action brought for fees—“Sent by the post”—Computation of time—Solicitors Act, 1843 (6 and 7 Vict. c. 73), s. 37.*—Under section 37 of the Solicitors Act, 1843, which directs that no solicitor shall commence an action for the recovery of his fees for business done by him until the expiration of one month after he shall have delivered his bill of costs to the party to be charged. The month is to be a clear calendar month, reckoned exclusively of the days on which the bill is delivered and the action brought.

Where the bill is “sent by the post” the person to be charged, time will run from the day when the bill would be delivered in ordinary course of post. The month will be reckoned exclusively of that day and of the day when the action is brought.—BROWNE v. BLACK, K.B.D., 350; 1911, 1 K. B. 975.

4. *Costs—Taxation—Will—Solicitor—Executor—Insolvent estate—Administration action—Profit costs.*—A solicitor who is sole executor and trustee of a will is not entitled, if the estate is found to be insolvent, to his costs of defending an administration action in person, nor to any other costs, except his out-of-pocket expenses, even though the will contained a clause empowering him to make professional charges, and the order in the action on further consideration directed the costs of the defendant to be taxed as between solicitor and client, and retained by him out of the balance due from him.—RE SHUTTLEWORTH, Joyce, J., 366.

5. *Lien—Trust deed—Retainer by trustees—Position of cestui que trust.*—If a solicitor, acting on a retainer from the trustees, does work in connection with the preparation of a trust deed, he is entitled to a lien on that document for his costs. It makes no difference that the deed is not actually drawn by the solicitor, and the lien may be enforced against the *cestui que trust* to the same extent as against the trustee.—RE DEE ESTATES, C.A., 424; 1911, 2 Ch. 85.

6. *Lump sum paid by client to solicitor for conduct of proceedings—Counsel employed by solicitor—Fees marked on brief—Failure by solicitor to pay counsel—Professional misconduct.*—A client agreed with a solicitor to conduct legal proceedings on his behalf for the lump sum of £70. On the 12th of November, 1907, counsel was instructed to appear in the matter, and his brief was marked three guineas and one guinea. The client paid the solicitor £50 on the 19th of April, 1907, and the remaining £20 on the 15th of November, 1907. The barrister's clerk applied on a number of occasions for the payment of the fees marked on the brief, but on the 1st of May, 1910, the fees had not been paid. The matter having been brought before the Law Society by the Bar Council, the solicitor on the 25th of May, 1910, paid the fees in full, stating in a letter by the solicitor to the Bar Council that he had distinguished the case from one in which a payment had been received from a client on account of counsel's fees, or where the fees had been set out in a bill of costs, and the bill paid, and also pleading poverty. It appeared that the matter in respect of which the lump sum had been paid was an action in the High Court, in which the client was a party.

Held, that the solicitor had committed professional misconduct within the meaning of the Solicitors' Act, 1888, and the order was made that the solicitor should pay the costs of the inquiry before the Law Society, and of the application to the court.—RE A SOLICITOR, EX PARTE THE LAW SOCIETY, K.B.D., 49.

7. *Misconduct—Concoction of false letter purporting to be written by prisoner lying under sentence of death—Professional misconduct.*—The Statutory Committee of the Law Society found that the respondent had, on the 21st of November, 1910, in the capacity of legal adviser to one Crippen, been permitted to visit him when a convict detained in his Majesty's prison, Pentonville, under sentence of death, and in abuse of the privilege thus extended to him, aided and abetted one Horatio Bottomley, the editor of *John Bull*, to disseminate in that publication false information in the form of

a letter purporting to have been written by Crippen from prison, although, as the respondent well knew, no such letter in fact existed, and had further published, or permitted to be published, through the medium of *John Bull* and the *Daily Chronicle*, other false statements relating to the same matter, well knowing them to be false, whereby the public might be deceived.

Held, that on these findings, with which the court agreed, the respondent had been guilty of professional misconduct within the meaning of the Solicitors Act, 1888.—RE A SOLICITOR, K.B.D. 670.

8. *Registrar of county court—Defendant in person—Costs—Taxation—Taxation by registrar of his own bill of costs—County Courts Act, 1888 (51 and 52 Vict. c. 43), ss. 41, 43, 118—County Court Rules, ord. 53, r. 25.*—The registrar of a county court who is sued in his own court, and appears in person, is entitled to recover from an unsuccessful plaintiff the costs that a solicitor defendant is entitled to on taxation; and, by reason of section 118 of the County Courts Act, 1888, the registrar's bill of costs must of necessity be taxed by the registrar himself.—TOLPITT & Co. v. M., C.A., 293; 1911, 1 K. B. 836.

9. *Retainer to conduct defence to an action—Company—Non-registration—Implied warranty of existence of authority—Liability of solicitor to pay plaintiff's costs.*—A solicitor warrants the authority which he claims as representing his client. If, therefore, he enters an appearance in an action on behalf of a corporation, he warrants the existence of the corporation, and is personally liable to pay the costs thrown away if the corporation should prove to be non-existent. In such a case it is not a good defence that, though the corporation is non-existent, the solicitor received instructions on behalf of individuals who were carrying on business under the style and in the name of the non-existent corporation.—SIMMONS v. LIBERAL OPINION, LTD., C.A., 315; 1911, 1 K. B. 966.

10. *Suspension—Appeal—Order of Divisional Court reversed.*—Appeal from order of Divisional Court for suspension of a solicitor from practice allowed.—RE HALL-WRIGHT, C.A., 238.

#### TRADE ASSOCIATION:—

*Expulsion of member—Rules—Ultra vires—Foreign arbitration—Enforcement of award.*—The court will not control the rules and regulations which a majority of the members of an association adopt for the conduct of their undertaking, unless satisfied that they are so oppressive as to defraud the minority or violate some principle of law.

An award in a foreign arbitration is not a decision which the court here ought to recognize as a foreign judgment, and therefore cannot be enforced.—MERRIFIELD, ZIEGLER & Co. v. LIVERPOOL COTTON ASSOCIATION, Eve, J., 581.

#### TRADE MARK:—

1. *Invented word—User of trade-mark as registered—Probability of deception—Motion to rectify register.*—The plaintiffs, who are the proprietors of the extract of meat and malt wine known as “Wincarnis,” brought an action against the defendants for an injunction to restrain them from selling any medicated wine or similar preparation in bottles so got up as to be calculated to lead to the belief that the defendants' preparation is the plaintiffs' “Wincarnis” preparation: and they also moved to rectify the Register of Trade-marks by striking off therefrom the name “Carvino,” which had been registered by the defendants as the name of their preparation of medicated wine.

The injunction was granted, but the motion was refused.—COLEMAN & Co. v. SMITH & Co., Swinfen Eady, J., 649.

2. *Registration—Distinctive mark—Letters of alphabet—Innate and acquired distinctiveness—Trade Marks Act, 1905, s. 9 (5).*—In the absence of special circumstances letters of the alphabet cannot be registered as a distinctive mark under subsection 5 of section 9 of the Trade Marks Act, 1905. But distinctiveness is an attribute which can be acquired, it need not necessarily be innate, and there may be cases where the initial letters of surnames of a trader have been so used as, in fact, to have become distinctive of particular goods.—RE W. & G. DU CROS' APPLICATION, Eve, J., 567.

#### TRADE NAME:—

*Passing off—Infringement—Fraud—Injunction.*—Where a person manufactures and sells an article under a name that is not his own, but is the name under which another firm manufactures and sells a similar article, it will be presumed that his intention is fraudulent, and an injunction will be granted to restrain him, even if no deception has in fact resulted.—CLAUDIUS ASH & Co. v. INVICTA Co., Warrington, J., 348.



**TRADE UNION:—**

1. *Rules—£100 benefit on total incapacity—To be returned on resumption of trade—Action by union for return of £100—Agreement concerning conditions on which members shall or shall not employ or be employed—Agreement for payment of penalty—Agreement for application of funds to provide benefits to members—Trade Union Act (34 & 35 Vict. c. 31), s. 4 (1) (2) and (3) (a).*—By section 4 of the Trade Union Act, 1871 (34 & 35 Vict. c. 31): "Nothing in this Act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely: (1) Any agreement between members of a trade union as such concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed; (2) Any agreement for the payment by any person of any subscription or penalty to a trade union; (3) Any agreement for the application of the funds of a trade union,—(a) To provide benefits to members . . . ."

By a rule of a trade union within the meaning of the Trade Union Act, 1871, a member, who was totally incapacitated from following his employment for the remainder of his life, was, under certain conditions, entitled to £100 from the funds of the society; but a member receiving the benefit had to sign an agreement that in the event of his returning to his trade he would refund to the society the £100. A member of the society received £100 under this rule, and subsequently returned to his trade. The union then sued the member under the agreement for the return of the £100.

Held, that the agreement for the return of the £100 did not come within either section 4 (1) or section 4 (2) or section 4 (3) (a) of the Trade Union Act, 1871, and that judgment must be entered for the plaintiffs.—*FRIENDLY SOCIETY OF IRONFOUNDERS v. INGALL, K.B.D., 409.*

2. *Rules—Voluntary levy—Parliamentary and municipal representation—Parliamentary fund—Injunction.*—A rule of a trade union which purports to confer on the union a power to levy contributions from members for the election or support of labour representatives on municipal or other local authorities (not including boards of guardians), and to raise a parliamentary fund, is invalid.—*WILSON v. AMALGAMATED SOCIETY OF ENGINEERS, Parker, J., 498.*

**TRUST:—**

*Annuity—Income tax—Covenant to pay annuity—Deduction of income tax.*—By his marriage settlement the husband covenanted that if during the widowhood of his wife the income of his wife's trust fund in any year should not amount to the clear annual sum of £2,000 his executors should in every such year pay to his widow such a sum as would make up the income to £2,000.

Held, that the executors were entitled to deduct income tax on the amount by which the income of the wife's trust fund fell short of £2,000.—*RE SIR DANIEL COOPER'S ESTATE, Eve, J., 522.*

**TRUSTEES:—**

1. *Investment—Power to invest in securities of British colony or dependency—Province of Canada—"Colony"—Colonial Stock Acts, 1877 to 1900—Interpretation Act, 1889, s. 18 (3).*—A power for trustees to invest capital moneys in any stock or securities of any British colony or dependency does not justify the trustees in investing in the stock issued by one of the provinces of the Dominion of Canada. Such a province is not for the purposes of investment a colony or dependency.—*RE SIR S. M. MARYON-WILSON'S ESTATE, Eve, J., 499.*

2. *Investment on mortgage—Trade premises—One half of value—Valuation—Breach of trust—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 8—Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3.*—There is no fixed rule that trustees are not justified in lending more than one half of the value on the mortgage of buildings used in trade. It is a matter for the discretion of the trustees.

Where trustees advanced money on mortgage without a valuation made for the purpose, but relying on a valuation made some two years previously, and the mortgage proved insufficient,

Held, that the trustees had not committed a breach of trust, but that even if they had, they had acted honestly and reasonably, and ought to be excused under the Judicial Trustees Act.—*PALMER v. EMERSON, Eve, J., 365; 1911, 1 Ch. 758.*

3. *Profit out of trust—Partner as a trustee—Salary as salesman to the firm—Liability to account.*—A testator appointed one of his sons to be a trustee of his will, and thereby also nominated the same son to be a partner in the testator's firm as a trustee for himself and other beneficiaries. The son accordingly became a partner on the death of the testator, and agreed with his co-partner to continue an arrangement which had existed in the testator's

lifetime under which the son acted as salesman to the firm and received a salary for his services.

Held, following *Re Dover Coal Field Extensions (Limited)* (1908, 1 Ch. 65), that the son was under no obligation to account for the salary to the testator's estate as a trustee, but was entitled to retain it beneficially.—*RE LEWIS, LEWIS v. LEWIS, Warrington, J., 29.*

4. *Public Trustee—Investigation and audit of trust accounts—Costs—Appeal from order of Public Trustee—Public Trustee Act, 1906 (6 Ed. 7, c. 55), ss. 10 and 13.*—In making an order for the payment of the costs of making an audit of trust accounts under section 13 (5) of the Public Trustee Act, 1906, the Public Trustee is acting in a judicial capacity, and an appeal lies to the court for his order. The Public Trustee is not a necessary party to the appeal.—*RE ODDY, Parker, J., 348; 1911, 1 Ch. 532.*

5. *Public Trustee—Jurisdiction—Power to administer small estate over £1,000—Reduced to less than £500 by distribution—Public Trustee Act, 1906 (6 Ed. 7, c. 55), s. 3.*—The gross capital value of the small estate referred to in section 3 of the Public Trustee Act, 1906, is to be ascertained at the date of the application to the Public Trustee to administer the estate, and not at the date of the death of the testator or intestate. Accordingly, the Public Trustee has power to administer an estate the gross capital value of which was more than £1,000 at the death, but which has been reduced below that sum by distribution.—*RE DEVERAUX, TOOVEY v. PUBLIC TRUSTEE, Eve, J., 715.*

6. *Public Trustee—Power to appoint new trustees—Not less than three—Appointment of Public Trustee by court—Trustee Act, 1893, ss. 10, 25—Public Trustee Act, 1906, ss. 3, 5—Settled Land Act, 1882, ss. 39, 45.*—The court has jurisdiction to appoint the Public Trustee as sole trustee even when the power to appoint new trustees in the trust instrument provides that the number of trustees shall be not less than three.

The Public Trustee can be appointed trustee for the purposes of the Settled Land Acts.—*RE LESLIE'S HASSOP ESTATES, Eve, J., 384; 1911, 1 Ch. 610.*

7. *Repayment of mortgage moneys—Misappropriation by solicitor—Liability of trustee—Money allowed to remain in solicitor's hands—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 17.*—A settled fund was invested upon mortgage, and the money lent thereon being about to be paid off, the trustees executed a reconveyance, which they handed to their solicitor for the purpose of obtaining the repayment. The solicitor retained the reconveyance for a period of four months, during which time he received and misappropriated a part of the money. Shortly after the handing over of the reconveyance one of the trustees died. The surviving trustee repeatedly inquired whether the money had been paid off, but the solicitor always informed him that the matter was not yet completed. Upon this action being brought by one of the beneficiaries for an order to make the trustee liable for the loss, it was held that, although the trustee knew that the solicitor had been dilatory and unbusinesslike in the matters of another trust, yet, as he had no knowledge which could lead him to suspect the solicitor's honesty, he was justified in leaving the reconveyance with the solicitor to be used as required, and that his allowing the money to remain for some time in the solicitor's hands did not disentitle him to the protection given by section 17 of the Trustee Act, 1893, since he did not know that the money had been repaid, and had no reason for doubting the solicitor's replies to his queries.—*RE SHEPARD, DE BRIMONT v. HARVEY, Parker, J., 13; 1911, 1 Ch. 50.*

**VENDOR AND PURCHASER:—**

1. *Deposit—No clause forfeiting deposit—Judgment for specific performance—Default by purchaser—Rescission of contract—Deposit claimed by vendor.*—On signing the contract for sale the purchaser paid a deposit to the vendor's solicitors. The contract did not contain a clause forfeiting the deposit if the purchaser made default in completing. The purchaser did not complete, and vendor obtained judgment for specific performance. The vendor now moved that the contract might be rescinded and for a declaration that he was entitled to the deposit.

Held, that the vendor was entitled to the order asked for. *Howe v. Smith* (27 Ch. D. 89) explained. *Jackson v. De Kadiach* (1904, W. N. 168) distinguished.—*HALL v. BURNELL, Eve, J., 737.*

2. *"Purchase money"—Bonus payable to the vendor by a third party—Irish Land Act, 1903 (3 Ed. 7, c. 37), s. 48.*—"Purchase money" is the money which a purchaser pays to the vendor for the estate which he is buying, and does not include money paid by a third party to the vendor in order to induce him to sell to the purchaser at a certain price. Therefore the percentage or bonus payable out of the Irish Land Purchase Fund under section 48 of the Irish Land Act, 1903, in certain cases, to a vendor of land in

Ireland does not form part of "the purchase money" of that land in the ordinary sense of that term.—*RE OLIVER, RAMSDEN v. RAMSDEN, Warrington, J., 12.*

3. *Registered land—Land Transfer Act, 1897, s. 16, sub-section 2—Mortgage by sub-demise of registered leaseholds—Sale under statutory power—Duty of vendor to place himself on the register.*—A mortgagee of leaseholds under a mortgage by sub-demise selling his sub-term under his statutory power of sale is not a vendor of registered land within the meaning of sub-section 2 of section 16 of the Land Transfer Act, 1897, if no person has been registered as proprietor of the sub-term, even though the land has been placed upon the register by the person entitled to the leasehold reversion on his sub-term. Such a mortgagee by sub-demise is therefore not required by section 16 either to procure the registration of himself as proprietor of the charge or to procure a transfer from the registered proprietor to the purchaser.—*RE VOSS AND SAUNDERS' CONTRACT, Warrington, J., 12; 1911, 1 Ch. 42.*

4. *Specific performance—Action on contract—Costs.*—Where a decree for specific performance, with inquiry as to title, is granted in an action in which questions of contract only, and not of title, are raised, the purchaser will be ordered to pay the costs of the action and inquiry upon title being shewn.—*BANFIELD v. PICARD, Joyce, J., 649.*

5. *Specific performance—Letters—Reference to a formal contract—Completing open contract.*—Where the vendor's agent in a letter accepting an offer by the purchaser wrote: "We shall be glad to meet you at your early convenience to receive a deposit on the sale to you and to arrange for a formal contract to be drawn out for signature by the solicitors."

Held that this was not a conditional acceptance, but a letter completing an open contract of which specific performance could be enforced as against the purchaser.—*ROUSE v. GINSBERG, Swinfen Eady, J., 632.*

#### WATERWORKS:—

1. *Metropolis—Negligence—Stop-cock in pavement—Liability to repair—Metropolitan Water Board (Charges) Act, 1907 (7 Ed. 7, c. clxxi.), ss. 7, 19.*—Section 8 of the Metropolitan Water Board (Charges) Act, 1907, which imposes on the owner or occupier of premises requiring a supply of water the obligation of providing, laying, and maintaining the communication pipes and other apparatus, is retrospective. Therefore in an action brought to recover damages alleged to have been caused through the defective condition of the stop-cock in the pavement, the Water Board held not liable.

Decision of Divisional Court (55 SOLICITORS' JOURNAL, 330; 1911, 1 K. B. 845) reversed.—*BATT v. METROPOLITAN WATER BOARD, C.A., 714.*

2. *New River Company—King's clog—Metropolis Water Act, 1902 (2 Ed. 7, c. 41), ss. 2, 3, 4.*—Held, that the King's clog, which now consists of an annual payment of a sum of £400 was a "debt, liability or obligation" which had been transferred to the Metropolitan Water Board by virtue of the Metropolis Water Act, 1902, and payment of the same was under section 4 secured upon the water fund established by that Act.

Decision of the Court of Appeal (Fletcher Moulton, L.J., dissenting) (reported 25 T. L. R. 193) affirmed.—*METROPOLITAN WATER BOARD v. ADAIR, H.L., 270.*

3. *Statutory powers—Agreement for construction of mains—Distribution of water in statutory area—Delegation of powers—Ultra vires—Ticehurst Water Act, 1902 (2 Ed. 7, c. clxx)—Waterworks Clauses Acts, 1847 (10 & 11 Vict. c. 17), 1863 (26 & 27 Vict. c. 93).*—The plaintiffs, a water company incorporated by statute, agreed with the defendants that the latter should, within the statutory area, construct mains and works, collect water rates, and distribute water, which was to be supplied in bulk at a fixed charge by the plaintiff company.

Held, that this agreement was not a delegation of statutory powers; it was therefore valid, and *intra vires* the company.—*TICEHURST WATER AND GAS CO. v. GAS AND WATERWORKS SUPPLY AND CONSTRUCTION CO., Warrington, J., 459.*

4. *Supply of water—"Domestic purposes"—"Trade purposes"—Business premises—Metropolitan Water Board (Charges) Act, 1907 (7 Ed. 7, c. clxxi.), ss. 9, 25.*—The defendants, who were manufacturers, required at their factory a supply of water for their employees to use for drinking and personal washing. The water was also used to cleanse the urinals and closets provided for the employees. No one resided on the premises.

Held, by Farwell and Kennedy, L.J.J., Vaughan Williams, L.J., dissenting, that the water was supplied for domestic and not for trade purposes.

Accordingly the appeal of the Water Board from an order of the Divisional Court (Phillimore and Coleridge, J.J.) (reported 27

T. L. R. 167) whereby, as the court differed in opinion, the appeal of the Water Board from a decision of the county court judge was dismissed without costs, was allowed with costs.—*METROPOLITAN WATER BOARD v. COLLEY'S PATENT, C.A., 311; 1911, 2 K. B. 38.*

#### WILL:—

1. *Ademption—Bequest of 100 £1 shares—Subsequent conversion into 1,000 shares of 2s. each.*—A testator bequeathed "my 100 shares in the Palatine Rubber Syndicate." There was no such company, but there was a company called the Pataling Rubber Syndicate, in which the testator held at the date of his will 100 £1 shares, each of which was by special resolution of the company subsequently subdivided into ten shares of 2s. each.

Held, that the 1,000 shares of 2s. each passed under the bequest.—*RE GREENBERRY, Eve, J., 633.*

2. *Benefice—Condition—Bequest for augmentation of benefice—Not to be held in plurality—Union of benefices.*—Where there is a bequest to a benefice on condition that it shall never be held in plurality, the condition is not broken by the union of the benefice with another benefice under an Order in Council.—*RE MACNAMARA'S ESTATE, Eve, J., 499.*

3. *Blank left for names of trustees—Revocation of life interest—Effect on gifts in remainder—Fire insurance—Obligation on trustees to insure—Trustee Act, 1893, s. 18.*—A blank was left in a will as if for the purpose of inserting the names of trustees, which were duly inserted in other parts of the will.

Held, that in the absence of evidence that the testator intended to fill up the blank, the court could not say that the names were omitted inadvertently.

A revocation of a life interest does not of itself operate to revoke the interests in remainder.

In the absence of express provision trustees are not bound to insure against loss by fire, and pay the premiums out of income.—*RE McEACHARN, Eve, J., 204.*

4. *Charity—Gift to found homes for aged poor—Site to be in western suburb of London or in adjacent country—"Western suburb"—"Adjacent."*—A testator gave a large sum of money to found homes for aged poor, and directed his trustees to lay out a sufficient part thereof in the purchase of a site "in some or one of the western suburbs of London or in the adjacent country." The trustees proposed to purchase a very eligible site for the purpose near Croydon.

Held, that the site was not in a western suburb or in the adjacent country.—*RE WHITELEY, Eve, J., 291.*

5. *Construction—Bequest of moneys invested in any bank or institution—Consols whether included in the bequest.*—A testatrix bequeathed all moneys deposited or invested in any bank or institution, or owing or due to her at her death, to a hospital. The testatrix died possessed of a considerable sum invested in Consols.

Held, that the Consols passed under the bequest.—*RE HARRING, Eve, J., 93.*

6. *Construction—Bequests to "my wife" "during widowhood" or until "her decease or second marriage"—Invalid marriage.*—A testator gave certain property to his "wife" to be enjoyed by her "during widowhood," with gifts over after her "decease or second marriage." The lady whom the testator thus described as his wife, and with whom he went through the form of marriage, was not in fact his wife, and though the testator did not know this, he was aware that it might be so, if the lady's husband, whom they believed to be dead, should prove to be alive. After the testator's death it was discovered that the lady's husband was still living.

Held, that the lady, whom the testator described as his "wife," was entitled to enjoy the property until her death or future marriage.—*RE HAMMOND, BURNISTON v. WHITE, Parker, J., 649.*

7. *Construction—Joint tenancy or tenancy in common—Words of severance—Powers of advancement and maintenance—"Presumptively entitled."*—A testator gave his residuary estate to trustees upon trust for A. for life, and on A.'s death to divide between and amongst the members of a class then living, and their issue *per stirpes* if any of them should be then dead; and he gave his trustees powers of maintenance and advancement. The power of maintenance was a power "during the minority of any legatee entitled" under the will, to apply to maintenance the whole or part of "the annual income to which any such infant legatee shall for the time being be actually or presumptively entitled." The power of advancement was a power, "from time to time during the minority of any male legatee" under the will, to apply to his advancement "all or any part of the capital to which such legatee shall be presumptively entitled for the time being." On a summons taken out after A.'s death,

Held, that the substitutional gift was restricted to children only of members of the class, and that (on the construction of the main-

tenance and advancement clauses) such children took as tenants in common.—*BENNETT v. HOULDSWORTH, Joyce, J.*, 270.

8. *Devise of house and premises—"In which I now reside"—Additional land purchased after date of will—Power to invest in preference stock—Investment in preference shares.*—A testator devised his "house and premises, known as Ankerwyke, in which I now reside," to his wife. Between the date of his will and his death he purchased additional land, which he occupied with the house until his death.

Held, that the additional land passed under the devise of the house and premises.

The testator empowered his trustees to invest in preference stock of any company in the United Kingdom.

Held, that the trustees were not authorized to invest in preference shares.—*RE WILLIS, SPENCER v. WILLIS, Eve, J.*, 598.

9. *Direction to pay testamentary expenses out of residue—Estate duty—Settlement estate duty—Increased duties—New duties—Finance Act, 1910, s. 54, 58.*—A testator who died in July, 1909, bequeathed his residuary personalty upon trust to pay thereout all his testamentary expenses incident to the trusts, including estate duty and settlement estate duty.

Held, that the increased duties and the new duties imposed by the Finance Act, 1910, were payable out of the residuary personalty.—*RE BRISCOE, ROYDS v. B., Eve, J.*, 93.

10. *Gift during widowhood—Deceased Wife's Sister's Marriage Act, 1907 (7 Ed. 7, c. 47), s. 2—Existing rights and interests.*—A testator gave all his property to trustees upon trust to pay the income thereof to his widow for life or until she should re-marry. The widow married her deceased sister's widower, and upon this marriage being legalized by the Deceased Wife's Sister's Marriage Act, 1907, the trustees ceased paying her the income.

Held, that according to section 2 of the Deceased Wife's Sister's Marriage Act, the lady's interest in the testator's estate had not determined.—*RE WHITFIELD, Parker, J.*, 237; 1911, 1 Ch. 310.

11. *Legacy—Husband and wife—Gift while living apart—Condition—Policy of the law.*—A gift to a married woman, during such time as her husband should be living apart from her, with a limitation over away from her in the event of their living together again, is not necessarily invalid, as being against public policy, if she was at the date of the testator's will already deserted by her husband.

*Re Moore, Trafford v. Maconochie* (1888, 37 W. R. 83; 39 Ch. D. 116) distinguished.—*RE CHARLETON, BEACEY v. SHERWIN, Joyce, J.*, 330.

12. *Legacy—Interest—Gift to son on attaining twenty-five—Interest by way of maintenance—Other provisions for maintenance—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 43.*—A testator bequeathed a legacy of £15,000 to each of his sons who attained the age of twenty-five years, and a further legacy of £15,000 to each of his sons who attained the age of thirty, and the testator also bequeathed a share of residue to each of his sons.

Held, that the legacies did not carry interest.

*Re Moody* (1895, 1 Ch. 101) followed.—*RE ABRAHAM, ABRAHAM v. BENDON, Eve, J.*, 46; 1911, 1 Ch. 108.

13. *Power to appoint among named persons—Default of appointment—Implied gift—Death of remainderman during life interest.*—A bequest to A. for life, "with remainder as he shall by deed or will and in his sole discretion appoint amongst" certain named persons, creates a trust by implication, in default of appointment, for such of those persons as survive the testator, whether they survive the life tenant or not.

*Wilson v. Duguid* (1883, 31 W. R. 945, 24 Ch. D. 244) applied.—*RE WALFORD, Joyce, J.*, 384.

14. *Remoteness—Trust to pay off mortgage out of income—Trust for sale—Mortgage debt payable by instalments.*—A testator devised real estate upon trust out of income to pay off the mortgages thereon, and then to sell and divide the proceeds among his children. The mortgages were repayable by instalments, which, if duly paid, would discharge the mortgages within a life in being and twenty-one years afterwards.

Held, that as the trust for sale would not necessarily arise within the prescribed period, the devise was void for remoteness.—*RE BEWICK, RYLE v. RYLE, Eve, J.*, 109; 1911, 1 Ch. 116.

15. *Settled legacy—Annuity—Insufficient estate—Apportionment.*—The testator left his estate to trustees on trust to convert, and as to one moiety of the proceeds, to hold £2,500 on trust for M. T. for life, and to set aside a sum sufficient to produce an income of £78 per annum, and hold the same in trust for A. T. for life. The moiety of the estate proved insufficient to satisfy the legacy and annuity.

Held, that the trustees must ascertain what sum invested in 2½ per cent. Consols at one year from the testator's death would have been sufficient to produce an income of £78 per annum, and apportion the moiety of the estate in the proportion of that sum to £2,500.—*RE McMAHON, Warrington, J.*, 552.

See also Probate.

WORKMEN'S COMPENSATION.—See Master and Servant.

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# STATUTES.

1 GEO. 5.

## CHAPTER 1.

[CONSOLIDATED FUND (No. 1) ACT, 1911.]

An Act to apply certain sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March one thousand nine hundred and ten, one thousand nine hundred and eleven, and one thousand nine hundred and twelve.

[29th March 1911.]

## CHAPTER 2.

[REVENUE ACT, 1911.]

An Act to amend the Law relating to Inland Revenue (including Excise) and the National Debt, and for other purposes connected with Finance.

[31st March 1911.]

Be it enacted, &c. :

### PART I.

#### DUTIES ON LAND VALUES.

1. *Avoidance of contracts for payment of increment value duty by transferee or lessee.*—Any contract made after the passing of this Act between a transferor and transferee or a lessor and lessee for the payment by the transferee or lessee, as the case may be, of increment value duty, or any expenses incurred in connexion with the payment or assessment of the duty, or for the repayment or re-imbursement by the transferee or lessee to the transferor or lessor in any manner of any payments made by the transferor or lessor in respect of that duty or any such expenses, shall be void.

2. *Amendment of s. 2 (3) of the principal Act.*—Sub-section (3) of section two of the principal Act (which relates to the definition of increment value) shall apply to the case of any transfer on sale of the fee simple of the land or of any interest in the land which took place twenty years or more before the thirtieth day of April, nineteen hundred and nine, and which was a transfer to the person who is the owner of the land or any interest in the land at the time when an application is made under that provision, as it applies to the case of a transfer on sale which took place within twenty years before the thirtieth day of April, nineteen hundred and nine.

In the cases where the original site value has been finally settled before the passing of this Act, an application may be made, notwithstanding anything in sub-section (3) of section two of the principal Act, under that sub-section, for the purpose of giving effect to this provision within three months after the date of the passing of this Act, and the Commissioners shall, in such a case, alter the original site value as finally settled in such manner (if any) as may be necessary to give effect to the amendment made by this provision, and, in cases where any amount has been paid on account of duty, the Commissioners shall make such repayment as may be necessary to adjust the amount paid to any alteration of value made in pursuance of this provision.

3. *Explanation and amendment of law as to reversion duty.*—(1) It is hereby declared that in relation to a lease which has determined the person in whom the lessor's interest was vested immediately before the expiration of the term for which the lease was granted, or, if the lease

has determined before that time, immediately before the transaction or event in consequence of which the lease has determined, is the lessor for the purpose of section fifteen of the Finance (1909-10) Act, 1910 [10 Edw. 7, c. 6] (in this Act referred to as the principal Act), and is the person to whom any benefit accrues from or by reason of the determination of the lease for the purpose of the other provisions of that Act relating to reversion duty.

(2) Where, whether before or after the passing of this Act, a lease of any land determines on the vesting of the lessor's interest and the lessee's interest in the same person before the expiration of the term for which the lease was granted, the amount of the reversion duty (if any) payable shall not be the full duty, but such an amount as would, with compound interest at the rate of four per centum per annum for the residue of the term for which the lease was granted, produce the amount of the full duty.

For the purposes of this provision the full duty means the duty (if any) which would have become payable if the lease had not determined until the expiration of the term for which it was granted, and, if the total value of the land were at that time the same, as it is when the lease actually determines.

(3) No reversion duty shall be charged on the determination of any lease of land where the lease is determined in pursuance of an agreement between the lessor and the lessee for the acquisition by the lessee of the lessor's interest, if at the time of the determination of the lease—

(a) the lease has at least fifty years of its term to run; and

(b) the total value of the land does not exceed five hundred pounds.

(4) Where a lease of any land held upon trust for any body of persons is determined before the expiration of the term of the lease by the surrender thereof to the lessor upon the terms that he shall grant to those persons severally leases of various plots of land representing in the aggregate the whole of the land comprised in the original lease, for a term in each case equal to the unexpired term of the residue of the original lease, and at rents amounting in the aggregate to but not exceeding the rent reserved by the original lease, no reversion duty shall be payable on the determination of the lease:

Provided that the lessor shall, in any case to which this provision applies, deliver an account under section fifteen of the principal Act in the same manner as if reversion duty were payable on the determination of the lease.

(5) Sub-section (3) of section fourteen of the principal Act shall cease to have effect and shall be deemed never to have had effect.

4. *Amendment of s. 16 (2) (b) of the principal Act.*—Twenty years shall be substituted for ten years as the limit of time for taking expenditure into account for the purposes of paragraph (b) of sub-section (2) of section sixteen of the principal Act.

5. *Amendment of s. 26 (1) of the principal Act.*—Notwithstanding anything in sub-section (1) of section twenty-six of the principal Act, the Commissioners may, on the request of the owner of any pieces of land which are contiguous, and which do not in the aggregate exceed one hundred acres in extent, value those pieces of land together for the purposes of that Act, although those pieces of land are under separate occupation, if they are satisfied that in the special circumstances of the case it is equitable to do so; and any such valuation may be made under this provision, although any of the pieces

of land have been valued before the passing of this Act, if the request for the valuation under this provision is made by the owner of the land within three months after the passing of this Act, and in that case any valuation previously made shall be of no effect.

6. *Saving in respect of the payment of increment value duty by certain statutory companies.*—Notwithstanding anything contained in the principal Act, where under the provisions of any lease or agreement any statutory company are required to pay over any part of the increment value of any land to His Majesty, or to any person on behalf of His Majesty, or any Department of Government, that part of the increment value shall, for the purposes of the provisions of the said Act as to the collection of increment value duty, be treated as increment value arising in respect of land held by His Majesty.

7. *Right of Commissioners of Inland Revenue to appeal against decision of referee.*—It is hereby declared that the Commissioners of Inland Revenue, if dissatisfied with the decision of a referee, have under sub-section (4) of section thirty-three of the principal Act a right of appeal to the High Court against the decision as persons aggrieved within the meaning of that provision.

### PART II.

#### EXCISE.

8. *Annual value for the purpose of excise licences.*—(1) The annual value of any premises for the purpose of the duty on any excise licence charged by reference to annual value shall be in England and Scotland—

(a) the inhabited house duty value if there is such a value applicable; and

(b) in a case where there is no inhabited house duty value applicable, the income tax value if there is such a value applicable; and

(c) if there is neither an inhabited house duty value nor an income tax value applicable, the annual value as determined by the Commissioners of Customs and Excise in accordance with the Acts relating to excise, but having regard in all cases to any decrease in the annual value resulting from any increase under the provisions of the principal Act in the licence duty.

For the purposes of this provision the inhabited house duty value means the value as adopted for the purposes of inhabited house duty, and the income tax value means the value as adopted for the purposes of income tax under Schedule A, of the Income Tax Act, 1853 [16 & 17 Vict. c. 34], and the inhabited house duty value or the income tax value, as the case may be, shall be deemed to be applicable if the premises to which a value is attached for the purpose of those duties or either of them correspond with the premises the annual value of which is required for the purpose of the charge of the duty on the licence, except in cases where it is shown to the Commissioners of Customs and Excise that in the determination of the inhabited house duty value or income tax value, as the case may be, no regard has been had to any decrease in the annual value resulting from any increase under the provisions of the principal Act as amended by this Act in the licence duty.

(2) In Ireland the annual value of any premises for the purpose of the duty on any excise licence charged by reference to annual value shall be determined by the Commissioners of Customs and Excise in accordance with the Acts relating to Excise, but subject to the provisions of sub-section (7) of section forty-three of the Inland Revenue Act, 1890 [43 & 44 Vict. c. 20], and having regard

in all cases to any decrease in the annual value resulting from any increase under the provisions of the principal Act as amended by this Act in the licence duty.

(3) The foregoing provisions of this section shall be substituted for sub-section (1) of section forty-four of the principal Act, and that sub-section shall cease to have effect.

(4) This section shall have effect as respects licences granted after the passing of the principal Act and in force at the time of the passing of this Act; and if, in respect of the period for which any such licence was granted, any sum has been paid as duty on the licence in excess of the sum which would have been paid if this section had been in force at the date of the grant of the licence, the excess shall be repaid.

**9. Recovery of instalments of unpaid duty on licence in force at time of passing of Act.]** Where, since the date of the passing of the principal Act, any licence on which duty is charged under Part II. of that Act and which is in force at the time of the passing of this Act has been granted on payment of a portion only of the duty, whether in pursuance of sub-section (3) of section forty-nine of the principal Act or not, any portion of the duty not paid may, without prejudice to the operation of the said sub-section in cases where that sub-section is applicable, be recovered from the licence-holder as a debt due to His Majesty.

**10. Section 4 of 1 & 2 Will. 4, c. 32 not to apply to live game birds in certain cases.]** So much of section four of the Game Act, 1831, as makes it an offence for any person to buy or sell or have in his house, possession, or control game birds after the dates therein specified, shall not apply where the game is live game, and the person buying, selling, or having in his house, possession, or control the game, is keeping or intending to keep the game solely for the purpose of breeding or for sale alive, and either is licensed at the time to deal in game, or is a holder of a certificate or licence to kill game in force at the time.

The amendments made by this section shall have effect in the Game Act, 1831, as applied by any subsequent enactment as well as in that Act as originally enacted.

### PART III. INCOME TAX.

**11. Assessment and recovery of part of super-tax from wife in certain cases.]—**(1) Where a husband is required under sub-section (2) of section seventy-two of the principal Act to make a return of his total income from all sources for the purpose of supertax and part of that total income is the income of his wife, the Special Commissioners may, if for any reason they consider that they are unable to obtain a satisfactory return of the wife's income from the husband, require the wife to make a return of her income, and in that case the wife shall be under the like obligation to make a return under the said section as if she were not married, and the husband shall be relieved from any obligation to make such a return as respects the income of the wife.

(2) Where supertax is charged in a case where the wife has been required to make a return under the foregoing provision, such part of the total sum payable in respect of the supertax as bears the same proportion to that total sum as the wife's income bears to the total income shall be assessed on and recoverable from the wife in lieu of the husband.

(3) This section shall have effect with respect to the supertax charged for the year beginning the sixth day of April, nineteen hundred and nine, and for any subsequent year as if it had been contained in the principal Act, and the provisions of that Act with regard to the assessment and collection of supertax, and the penalties for failure to make a return, shall apply accordingly.

**12. Extension of the right to claim exemptions, &c., from income tax in certain cases to widows resident abroad who are in receipt of pensions.]** The proviso to sub-section (1) of section seventy-one of the principal Act (which gives the right to persons resident abroad to claim relief, exemption, or abatement from income tax in certain cases) shall apply to a widow who is in receipt

of a pension chargeable with income tax and granted to her in consideration of the employment of her late husband in the service of the Crown as it applies to the persons described in the proviso.

**13. Amendment as to ownership of securities for the purpose of s. 71 (2) of the principal Act.]** When the securities of a foreign State or British Possession are held under any trust, and the person who is the beneficiary in possession under the trust is the sole beneficiary in possession and can, by means either of the revocation of the trust or of the exercise of any powers under the trust, call upon the trustees at any time to transfer the securities to him absolutely free from any trust, that person shall be deemed to be the person owning the securities for the purpose of sub-section (2) of section seventy-one of the principal Act (which exempts from income tax under certain circumstances the interest and dividends of the securities of a foreign State or British Possession).

**14. Provisions as to payment of income tax in any year previously to the passing of the Act imposing the tax for that year.]—**(1) Where in any income tax year any half yearly or quarterly payments have been made on account of any dividend, interest, or other annual profits or gains, previously to the passing of the Act imposing the tax for that year, and income tax has not been charged thereon or deducted therefrom, or has not been charged thereon or deducted therefrom at the rate ultimately charged for the said year, the amount not so charged or deducted shall be charged under Schedule D. in respect of those payments as profits or gains not charged by virtue of any other Schedule, in accordance with the provisions contained in the sixth case of Schedule D. in section one hundred of the Income Tax Act, 1842 [5 & 6 Vict. c. 35], and the agents entrusted with the payment of the dividends, interest, or other annual profits or gains shall furnish a list containing the names and addresses of the persons to whom payments have been made, and the amount of those payments, to the Commissioners of Inland Revenue, upon a requisition made by the Commissioners in that behalf.

(2) Any person liable to pay any rent, interest, or annuity, or to make any other annual payment, shall be authorised to make any deduction on account of income tax for any income tax year which he has failed to make previously to the passing of the Act imposing the tax for that year, or to make up any deficiency in any such deduction which has been so made on the occasion of the next payment of the rent, interest, or annuity, or making of the other annual payment after the passing of the Act so imposing the tax, in addition to any other deduction which he may be by law authorised to make, and shall also be entitled, if there is no future payment from which the deduction may be made, to recover the sum which might have been deducted as if it were a debt due from the person as against whom the deduction could originally have been made if the Act imposing income tax for the year had been in force.

(3) In this section the expression "income tax year" means the year beginning the sixth day of April.

### PART IV. STAMPS.

**15. Exemption in certain cases of leases from increased stamp duty so far as consideration consists of a capital sum.]** Where the consideration, or any part of the consideration, for any lease or tack consists of any money, stock, or security (other than rent) the amount or value of which does not exceed five hundred pounds, and the instrument contains a statement certifying that the transaction thereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration other than rent exceeds five hundred pounds, section seventy-five of the principal Act shall not apply to the duty chargeable in respect of the consideration, or part thereof,

which so consists of any money, stock, or security other than rent, but duty shall be charged in respect thereof as if that Act had not passed:

Provided that this section shall not apply in any case where part of the consideration for any lease or tack consists of rent, and that rent exceeds the sum of twenty pounds a year.

### PART V.

#### PROVISIONS AS TO PAYMENTS FOR LOCAL AUTHORITIES.

**16. Repeal of s. 91 of 10 Edw. 7, c. 5.]** Section ninety-one of the principal Act (which provides for the payment of half the proceeds of the duties on land values for the benefit of local authorities) shall be suspended in its operation as from the date of the principal Act until Parliament shall otherwise determine, but not beyond the thirty-first day of March, nineteen hundred and fourteen.

**17. Payment to Local Taxation Account of fixed sum in respect of the local taxation (Customs and Excise) duties. 7 Edw. 7, c. 13.]—**(1) The sum to be paid in respect of the local taxation (Customs and Excise) duties into the Local Taxation Account, and the Local Taxation (Scotland) Account, and the Local Taxation (Ireland) Account respectively, under sub-section (2) of section seventeen of the Finance Act, 1907, shall, in the current and every subsequent financial year until Parliament otherwise determines, instead of being a sum equal to the amount which would have been paid as the proceeds of those duties if that Act had not passed, be a sum equal to the amount of the English, Scottish, and Irish shares respectively of the proceeds of those duties during the financial year ending the thirty-first day of March, nineteen hundred and nine.

(2) There shall in addition be paid into each of the said Local Taxation Accounts during the current financial year out of the Consolidated Fund or the growing produce thereof, any amount by which the sum payable into that Account in respect of the proceeds of the local taxation (Customs and Excise) duties in the financial year ending the thirty-first day of March, nineteen hundred and ten, fell short of the sum which would have been so payable if this Act had been in force during that year, and any additional amount so paid into any Local Taxation Account shall be distributed and dealt with as if it were an addition to the sum paid into that account in respect of the local taxation (Customs and Excise) duties.

**18. Extension of s. 33 of 10 Edw. 7, c. 8, to all carriage licences.]—**(1) So much of sub-section (2) of section eighty-eight of the principal Act as provides for the payment of a part of the proceeds of the duties on licences for motor cars in England and Wales into the Exchequer, and for the payment out of the Consolidated Fund to the council of a county or county borough of any deficiency in the proceeds of those duties, shall extend to the proceeds of the duties on all carriage licences (whether licences for motor cars or not), and that provision shall be construed accordingly.

(2) Notwithstanding anything in section seventeen of the Finance Act, 1907, or in sub-section (1) of section eighty-eight of the principal Act, the sum to be paid out of the Consolidated Fund into the Local Taxation (Scotland) Account in pursuance of sub-section (2) of section seventeen of the Finance Act, 1907, in respect of the proceeds of the duties on carriage licences, shall be the amount of the proceeds of those duties during the year ending the thirty-first day of March, nineteen hundred and nine.

(3) Section ninety of the principal Act (which relates to the payment out of the Consolidated Fund of a sum equal to the net proceeds of the duties on motor spirit and motor car licences as the road improvement grant) shall be construed as if a reference to the duties on carriage licences were substituted in that section for the references to the duties on licences for motor cars which were affected by that Act and to the duties payable on licences for motor cars.



(4) In this section, the expression "duties on carriage licences" means the duties on all licences for carriages, including any duty charged under sub-section (1) of section eight of the Locomotives on Highways Act, 1896 [59 & 60 Vict. c. 36], and any duty charged under section eighty-six of the principal Act in respect of motor cars.

#### PART VI. NATIONAL DEBT.

**19. Provision as to old sinking fund for current financial year.]** For the purpose of calculating the old sinking fund for the financial year ending the thirty-first day of March, nineteen hundred and eleven, sections four and five of the Sinking Fund Act, 1875 [38 & 39 Vict. c. 45], shall have effect as if the income and expenditure therein referred to were the aggregate income and aggregate expenditure respectively for the two financial years ending the thirty-first day of March, nineteen hundred and ten, and the thirty-first day of March, nineteen hundred and eleven.

#### PART VII. MISCELLANEOUS.

**20. Repeal, construction, and short title.]—(1)** The enactments specified in the Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

(2) Part I. of this Act shall be construed together with Part I. of the principal Act.

Part II. of this Act shall be construed together with the Acts which relate to duties of Excise and the management of those duties.

Part III. of this Act shall be construed together with the Income Tax Act, 1842 [5 & 6 Vict. c. 35], and 1853 [16 & 17 Vict. c. 34], and any other enactments relating to income tax.

Part IV. of this Act shall be construed together with the Stamp Act, 1891 [54 & 55 Vict. c. 39].

(3) This Act may be cited as the Revenue Act, 1911.

#### SCHEDULE.

[Section 20.]

#### ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
10 Edw. 7. c. 8.	Finance (1909-10) Act, 1910.	Section fourteen, subsection (3); section forty-four, subsection (1); the words "and on licences for motor cars" in subsection (1) of section eighty-eight; subsection (3) of section eighty-eight; and section ninety-one.

#### CHAPTER 3.

[ARMY (ANNUAL) ACT, 1911.]

An Act to provide, during Twelve Months, for the Discipline and Regulation of the Army. [28th April 1911.]

#### CHAPTER 4.

[AERIAL NAVIGATION ACT, 1911.]

An Act to provide for the protection of the public against dangers arising from the Navigation of Aircraft. [2nd June 1911.]

Be it enacted, &c. :

**1. Power to prohibit navigation of aircraft over prescribed areas.]—(1)** A Secretary of State may, for the purpose of protecting the public from danger, from time to time by order prohibit the navigation of aircraft over such areas as may be prescribed in the order, and, if any person

navigates an aircraft over any such area in contravention of any such order, he shall be guilty of an offence under this Act, unless he proves that he was compelled to do so by reason of stress of weather or other circumstances over which he had no control.

(2) Any such order may apply either generally to all aircraft or to aircraft of such classes and descriptions only as may be specified in the order, and may prohibit the navigation of aircraft over any such prescribed area either at all times or at such times or on such occasions only as may be specified in the order, and either absolutely or subject to such exceptions or conditions as may be so specified.

**2. Penalties for offences.]—(1)** If any person is guilty of an offence under this Act, he shall be liable on conviction on indictment or on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding two hundred pounds, or to both such imprisonment and fine.

(2) Any person aggrieved by a summary conviction under this Act may, in England or Ireland, appeal to a court of quarter sessions, and in Scotland in like manner as in the case of a conviction under the Motor Car Act, 1903 [3 Edw. 7. c. 36], as provided by section eighteen of that Act.

**3. Short title.]** This Act may be cited as the Aerial Navigation Act, 1911.

#### CHAPTER 5.

[CONSOLIDATED FUND (No. 2) ACT, 1911.]

An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand nine hundred and twelve.

[29th June 1911.]

#### CHAPTER 6.

[PERJURY ACT, 1911.]

An Act to consolidate and simplify the Law relating to Perjury and kindred offences.

[29th June 1911.]

Be it enacted, &c. :

**1. Perjury.]—(1)** If any person lawfully sworn as a witness or as an interpreter in a judicial proceeding wilfully makes a statement material in that proceeding, which he knows to be false or does not believe to be true, he shall be guilty of perjury, and shall, on conviction thereof on indictment, be liable to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years, or to a fine or to both such penal servitude or imprisonment and fine.

(2) The expression "judicial proceeding" includes a proceeding before any court, tribunal, or person having by law power to hear, receive, and examine evidence on oath.

(3) Where a statement made for the purposes of a judicial proceeding is not made before the tribunal itself, but is made on oath before a person authorised by law to administer an oath to the person who makes the statement, and to record or authenticate the statement, it shall, for the purposes of this section, be treated as having been made in a judicial proceeding.

(4) A statement made by a person lawfully sworn in England for the purposes of a judicial proceeding—

(a) in another part of His Majesty's dominions; or

(b) in a British tribunal lawfully constituted in any place by sea or land outside His Majesty's dominions; or

(c) in a tribunal of any foreign state, shall, for the purposes of this section, be treated as a statement made in a judicial proceeding in England.

(5) Where, for the purposes of a judicial proceeding in England, a person is lawfully sworn under the authority of an Act of Parliament—

(a) in any other part of His Majesty's dominions; or

(b) before a British tribunal or a British officer in a foreign country, or within the jurisdiction of the Admiralty of England;

a statement made by such person so sworn as aforesaid (unless the Act of Parliament under which it was made otherwise specifically provides) shall be treated for the purposes of this section as having been made in the judicial proceeding in England for the purposes whereof it was made.

(6) The question whether a statement on which perjury is assigned was material is a question of law to be determined by the court of trial.

**2. False statements on oath made otherwise than in a judicial proceeding.]—If any person—**

(1) being required or authorised by law to make any statement on oath for any purpose, and being lawfully sworn (otherwise than in a judicial proceeding) wilfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true; or

(2) wilfully uses any false affidavit for the purposes of the Bills of Sale Act, 1878 [41 & 42 Vict. c. 31], as amended by any subsequent enactment,

he shall be guilty of a misdemeanour, and, on conviction thereof on indictment, shall be liable to penal servitude for a term not exceeding seven years or to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine or to both such penal servitude or imprisonment and fine.

**3. False statements, &c., with reference to marriage.]—If any person—**

(a) for the purpose of procuring a marriage, or a certificate or licence for marriage, knowingly and wilfully makes a false oath, or makes or signs a false declaration, notice or certificate required under any Act of Parliament for the time being in force relating to marriage; or

(b) knowingly and wilfully makes, or knowingly and wilfully causes to be made, for the purpose of being inserted in any register of marriage, a false statement as to any particular required by law to be known and registered relating to any marriage; or

(c) forbids the issue of any certificate or licence for marriage by falsely representing himself to be a person whose consent to the marriage is required by law knowing such representation to be false,

he shall be guilty of a misdemeanour, and, on conviction thereof on indictment, shall be liable to penal servitude for a term not exceeding seven years or to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine or to both such penal servitude or imprisonment and fine.

(2) No prosecution for knowingly and wilfully making a false declaration for the purpose of procuring any marriage out of the district in which the parties or one of them dwell shall take place after the expiration of eighteen months from the solemnization of the marriage to which the declaration refers.

**4. False statements, &c., as to births or deaths.]**

—(1) If any person—

(a) wilfully makes any false answer to any question put to him by any registrar of births or deaths relating to the particulars required to be registered concerning any birth or death, or, wilfully gives to any such registrar any false information concerning any birth or death or the cause of any death; or

(b) wilfully makes any false certificate or declaration under or for the purposes of any Act relating to the registration of births or deaths, or, knowing any such certificate or declaration to be false, uses the same as true or gives or sends the same as true to any person; or

(c) wilfully makes, gives or uses any false statement or declaration as to a child born alive as having been still-born, or as to the body of a deceased person or a still-born child in any coffin, or falsely

pretends that any child born alive was still-born; or

- (d) makes any false statement with intent to have the same inserted in any register of births or deaths:

he shall be guilty of a misdemeanour and shall be liable—

- (i) on conviction thereof on indictment, to penal servitude for a term not exceeding seven years, or to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine instead of either of the said punishments; and  
(ii) on summary conviction thereof, to a penalty not exceeding ten pounds.

(2) A prosecution on indictment for an offence against this section shall not be commenced more than three years after the commission of the offence.

**5. False statutory declarations and other false statements without oath.]** If any person knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, and the statement is made—

- (a) in a statutory declaration; or  
(b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return, or other document which he is authorized or required to make, attest, or verify, by any public general Act of Parliament for the time being in force; or  
(c) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any public general Act of Parliament for the time being in force,

he shall be guilty of a misdemeanour and shall be liable on conviction thereof on indictment to imprisonment, with or without hard labour, for any term not exceeding two years, or to a fine or to both such imprisonment and fine.

**6. False declarations, &c., to obtain registration, &c., for carrying on a vocation.]**—If any person—

- (a) procures or attempts to procure himself to be registered on any register or roll kept under or in pursuance of any public general Act of Parliament for the time being in force of persons qualified by law to practise any vocation or calling; or  
(b) procures or attempts to procure a certificate of the registration of any person on any such register or roll as aforesaid,

by wilfully making or producing or causing to be made or produced either verbally or in writing, any declaration, certificate, or representation which he knows to be false or fraudulent, he shall be guilty of a misdemeanour and shall be liable on conviction thereof on indictment to imprisonment for any term not exceeding twelve months, or to a fine, or to both such imprisonment and fine.

**7. Aiders, abettors, suborners, &c.]**—(1) Every person who aids, abets, counsels, procures, or suborns another person to commit an offence against this Act shall be liable to be proceeded against, indicted, tried and punished as if he were a principal offender.

(2) Every person who incites or attempts to procure or suborn another person to commit an offence against this Act shall be guilty of a misdemeanour, and, on conviction thereof on indictment, shall be liable to imprisonment, or to a fine, or to both such imprisonment and fine.

**8. Venue.]** Where an offence against this Act or any offence punishable as perjury or as subornation of perjury under any other Act of Parliament is committed in any place either on sea or land outside the United Kingdom, the offender may be proceeded against, indicted, tried, and punished in any county or place in England where he was apprehended or is in custody as if the offence had been committed in that county or place; and, for all purposes incidental to or consequential on the trial or punishment of the offence, it shall be deemed to have been committed in that county or place.

**9. Power to direct a prosecution for perjury.]**—(1) Where any of the following authorities,

namely, a judge of, or person presiding in, a court of record, or a petty sessions court, or any justice of the peace sitting in special sessions, or any sheriff or his lawful deputy before whom a writ of inquiry or a writ of trial is executed, is of opinion that any person has, in the course of a proceeding before that authority, been guilty of perjury, the authority may order the prosecution of that person for such perjury, in case there shall appear to be reasonable cause for such prosecution, and may commit him, or admit him to bail, to take his trial at the proper court, and may require any person to enter into a recognizance to prosecute or give evidence against the person whose prosecution is so ordered, and may give the person so bound to prosecute a certificate of the making of the order for the prosecution, for which certificate no charge shall be made.

(2) An order made or a certificate given under this section shall not be given in evidence for the purpose or in the course of any trial of a prosecution resulting therefrom.

**10. Jurisdiction of quarter sessions.]** A court of quarter sessions shall not have jurisdiction to try an indictment for any offence against this Act, or for an offence which under any enactment for the time being in force is declared to be perjury or to be punishable as perjury, or as subornation of perjury.

**11. Application of Vexatious Indictments Act, 1859.]** The provisions of the Vexatious Indictments Act, 1859 [22 & 23 Vict. c. 17], and the Acts amending the same, shall apply in the case of any offence punishable under this Act, and in the case of any offence which under any other enactment for the time being in force, is declared to be perjury or subornation of perjury or is made punishable as perjury or as subornation of perjury, in like manner as if all the said offences were enumerated in section one of the said Vexatious Indictments Acts, 1859: Provided that in that section a reference to this Act shall be substituted for the reference therein to the Criminal Procedure Act, 1851 [14 & 15 Vict. c. 100].

**12. Form of indictment.]**—(1) In an indictment—

- (a) for making any false statement or false representation punishable under this Act; or  
(b) for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly taking, making, signing, or subscribing any oath, affirmation, solemn declaration, statutory declaration, affidavit, deposition, notice, certificate, or other writing,

it is sufficient to set forth the substance of the offence charged, and before which court or person (if any) the offence was committed without setting forth the proceedings or any part of the proceedings in the course of which the offence was committed, and without setting forth the authority of any court or person before whom the offence was committed.

(2) In an indictment for aiding, abetting, counselling, suborning, or procuring any other person to commit any offence hereinbefore in this section mentioned, or for conspiring with any other person, or with attempting to suborn or procure any other person, to commit any such offence, it is sufficient—

- (a) where such offence has been committed, to allege that offence, and then to allege that the defendant procured the commission of that offence; and  
(b) where such offence has not been committed, to set forth the substance of the offence charged against the defendant without setting forth any matter or thing which it is unnecessary to aver in the case of an indictment for a false statement or false representation punishable under this Act.

**13. Corroboration.]** A person shall not be liable to be convicted of any offence against this Act, or of any offence declared by any other Act

to be perjury or subornation of perjury, or to be punishable as perjury or subornation of perjury solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

**14. Proof of certain proceedings on which perjury is assigned.]** On a prosecution—

- (a) for perjury alleged to have been committed on the trial of an indictment for felony or misdemeanour; or  
(b) for procuring or suborning the commission of perjury on any such trial,

the fact of the former trial shall be sufficiently proved by the production of a certificate containing the substance and effect (omitting the formal parts) of the indictment and trial purporting to be signed by the clerk of the court, or other person having the custody of the records of the court where the indictment was tried, or by the deputy of that clerk or other person, without proof of the signature or official character of the clerk or person appearing to have signed the certificate.

**15. Interpretation, &c.]**—(1) For the purposes of this Act, the forms and ceremonies used in administering an oath are immaterial, if the court or person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question, and if the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection, or has declared to be binding on him.

(2) In this Act—

The expression "oath" in the case of persons for the time being allowed by law to affirm or declare instead of swearing, includes "affirmation" and "declaration," and the expression "swear" in the like case includes "affirm" and "declare"; and

The expression "statutory declaration" means a declaration made by virtue of the Statutory Declarations Act, 1835 [5 & 6 Will. 4, c. 62], or of any Act, Order in Council, rule or regulation applying or extending the provisions thereof; and

The expression "indictment" includes "criminal information."

**16. Savings.]**—(1) Where the making of a false statement is not only an offence under this Act, but also by virtue of some other Act is a corrupt practice or subjects the offender to any forfeiture or disqualification or to any penalty other than penal servitude, or imprisonment, or fine, the liability of the offender under this Act shall be in addition to and not in substitution for his liability under such other Act.

(2) Nothing in this Act shall apply to a statement made without oath by a child under the provisions of the Prevention of Cruelty to Children Act, 1904 [4 Edw. 7, c. 15], and the Children Act, 1906 [8 Edw. 7, c. 67].

(3) Where the making of a false statement is by any other Act, whether passed before or after the commencement of this Act, made punishable on summary conviction, proceedings may be taken either under such other Act or under this Act:

Provided that where such an offence is by any Act passed before the commencement of this Act, as originally enacted, made punishable only on summary conviction, it shall remain only so punishable.

**17. Repeals.]** The enactments specified in the schedule to this Act are hereby repealed, so far as they apply to England, to the extent specified in the third column of that schedule.

**18. Extent.]** This Act shall not extend to Scotland or Ireland.

**19. Short title and commencement.]** This Act may be cited as the Perjury Act, 1911, and shall come into operation on the first day of January, nineteen hundred and twelve.

SCHEDULE.  
ENACTMENTS REPEALED.  
[Section 17.]

Session and Chapter.	Title or Short Title.	Extent of Repeal.
32 Hen. 8. c. 9	Agensnt maineenance and embracery byeng of titles, &c.	In section three, the words "or suborne any witnes by lres, rewardis, promiaes, or by any other sinistre labour or meanes," and the words "or to the pro- curement or occasion of any manner of pjury by false verdict or otherwise." The whole Act.
5 Eliz. c. 9	An Act for the Punysheiment of suche persones as shall procure or comit any wyllful Perjurye	Section three from "and if convicted" to the end of the section.
1 Ann. stat. 2. c. 9-	An Act for punishing of Accessories to feloneys and Receivers of stolen Goods, and to prevent the wilful burning and destroying of Ships.	In section four, the words "or of wilful and corrupt perjury or of subornation of perjury."
12 Geo. 1. c. 29	The Frivolous Arrests Acts, 1725.	The whole Act.
2 Geo. 2. c. 25	The Perjury Act, 1728	Section seventy-five from "and if any such witness" to the end of the section.
24 Geo. 3. sess. 2. c. 25	The East India Company Act, 1781	Section five.
42 Geo. 3. c. 85	The Criminal Jurisdiction Act, 1802	Section one hundred and ninety-three.
42 Geo. 3. c. 116	The Land Tax Redemption Act, 1802	Section thirty-seven from "and if any person or persons making any such affidavit" to the end of the section.
48 Geo. 3. c. 149	The Probate and Legacy Duties Act, 1808.	Section twenty-five.
54 Geo. 3. c. 159	The Harbours Act, 1814	Section eleven.
56 Geo. 3. c. 46	The Civil List Audit Act, 1816	Section twenty-eight.
1 & 2 Geo. 4. c. 121	The Commissariat Accounts Act, 1821	In section one, the words "wilful and corrupt perjury or of subornation of perjury."
3 Geo. 4. c. 114	The Hard Labour Act, 1822	Section twenty-eight.
7 Geo. 4. c. 16	The Chelsea and Kilmainham Hospitals Act, 1826.	Section eighteen from "and if any such secretary" to the end of the section.
7 Geo. 4. c. 46	The Country Bankers Act, 1826	Section thirty-one.
7 & 8 Geo. 4. c. 53-	The Excise Management Act, 1827-	Section forty-four.
10 Geo. 4. c. 24	The Government Annuities Act, 1829	Section eighty-three.
10 Geo. 4. c. 50	The Crown Lands Act, 1829	Section seven from "and if upon such oath or affirmation" to the end of the section.
1 Will. 4. c. 22	The Evidence on Commission Act, 1831-	Section forty-five.
2 & 3 Will. 4. c. 53	The Army Prize Money Act, 1832	In section forty-six, the words "the offence of taking a false oath or suborning any person so to do or."
3 & 4 Will. 4. c. 41	The Judicial Committee Act, 1833-	Section forty-nine from "or shall knowingly take a false oath" to "other military service."
3 & 4 Will. 4. c. 49	The Quakers and Moravians Act, 1833	Section nine from "and every such witness" to the end of the section.
5 & 6 Will. 4. c. 62	The Statutory Declarations Act, 1835	Section one from "and if any such person" to "notwithstanding."
6 & 7 Will. 4. c. 71	The Tithe Act, 1836	Section five.
6 & 7 Will. 4. c. 86	The Births and Deaths Registration Act, 1836.	Section twelve from "and all and every" to the end of the section.
1 & 2 Vict. c. 77	The Quakers and Moravians Act, 1833	Section eighteen from "and if any declaration to the end of the section."
1 & 2 Vict. c. 105	The Oaths Act, 1838	Section twenty-one.
2 & 3 Vict. c. 71	The Metropolitan Police Courts Act, 1839.	Section ninety-three from the beginning of the section to "penalties of perjury, and."
3 & 4 Vict. c. 18	The Tobacco Act, 1840	Section forty-one.
3 & 4 Vict. c. 72	The Marriage Act, 1840	Section one from "and if any such person" to "are or shall be subject."
3 & 4 Vict. c. 86	The Church Discipline Act, 1840	In section one, the word "either" and the words "or a witness or a deponent" and from "and every such person" to the end of the section.
3 & 4 Vict. c. 97	The Railway Regulation Act, 1840	Section twenty-three.
5 & 6 Vict. c. 29	The Pentonville Prison Act, 1842.	Section ten from "and if such declaration" to the end of the section.
5 & 6 Vict. c. 35	The Income Tax Act, 1842	Section four.
5 & 6 Vict. c. 38	The Quarter Sessions Act, 1842	Section eighteen from "and every such witness" to the end of the section.
6 & 7 Vict. c. 18	The Parliamentary Voters Registration Act, 1843.	Section four.
8 & 9 Vict. c. 18	The Lands Clauses Consolidation Act, 1845.	Section twenty-seven.
8 & 9 Vict. c. 20	The Railways Clauses Consolidation Act, 1845.	Section one hundred and eighty.
8 & 9 Vict. c. 118	The Inclosure Act, 1845	In section one, the following words:— "6. Perjury and subornation of perjury: "7. Making or suborning any other person to make a false oath, affirma- tion, or declaration, punishable as perjury or as a misdemeanour:"
10 & 11 Vict. c. 14	The Markets and Fairs Clauses Act, 1847	In section forty-one, the words "and every person taking any oath or affirmation under this Act who shall wilfully swear or affirm falsely shall be guilty of perjury."
10 & 11 Vict. c. 15	The Gas Works Clauses Act, 1847	"In section eighty-one, the words "and if any person shall wilfully make a false answer to either of the questions aforesaid he shall be deemed guilty of a misdemeanour, and shall and may be indicted and punished accordingly."
10 & 11 Vict. c. 16	The Commissioners Clauses Act, 1847	Section one hundred and forty-nine.
10 & 11 Vict. c. 17	The Waterworks Clauses Act, 1847	Section one hundred and sixty.
10 & 11 Vict. c. 27	The Harbours, Docks, and Piers Clauses Act, 1847.	In section one hundred and sixty-four, the words "shall wilfully give false evidence, or shall make or subscribe a false declaration for the purposes of this Act, or."
10 & 11 Vict. c. 34	The Towns Improvement Clauses Act, 1847.	Section fifty-seven.
10 & 11 Vict. c. 65	The Cemeteries Clauses Act, 1847	Section forty-four.
		Sections thirteen and one hundred and eight.
		Section eighty-nine.
		Section ninety-six.
		Section two hundred and thirteen.
		Section sixty-five.



Session and Chapter.	Title or Short Title.	Extent of Repeal.
10 & 11 Vict. c. 69 -	The House of Commons Costs Taxation Act, 1847.	Section five from "and any person" to the end of the section.
10 & 11 Vict. c. 89 -	The Town Police Clauses Act, 1847 -	Section seventy-six.
10 & 11 Vict. c. 109 -	The Poor Law Board Act, 1847 -	Section twenty-six from the beginning of the section to "penalties of perjury; and."
11 & 12 Vict. c. 40 -	The Criminal Procedure Act, 1848 -	Section four from "both with regard" to "and otherwise."
12 & 13 Vict. c. 45 -	The Quarter Sessions Act, 1849 -	Section ten from "both with regard" to "and otherwise."
12 & 13 Vict. c. 78 -	The House of Lords Costs Taxation Act, 1849.	Section five from "and any person" to the end of the section.
14 & 15 Vict. c. 109 -	The Criminal Procedure Act, 1851 -	In section one, the words "both with respect to the liability of witnesses to be prosecuted for perjury and otherwise."
15 & 16 Vict. c. 56 -	The Pharmacy Act, 1852 -	Sections nineteen, twenty, twenty-one, and twenty-two.
15 & 16 Vict. c. 57 -	The Election Commissioners Act, 1852 -	Section sixteen from "shall wilfully" to "under this Act or."
16 & 17 Vict. c. 45 -	The Government Annuities Act, 1853 -	Section thirteen.
16 & 17 Vict. c. 137 -	The Charitable Trusts Act, 1853 -	Section thirty-two.
19 & 20 Vict. c. 54 -	The Grand Juries Act, 1856 -	Section thirteen.
19 & 20 Vict. c. 113 -	The Foreign Tribunals Evidence Act, 1856.	In section one, the words "and every person taking any oath or affirmation in support of any bill of indictment who shall wilfully swear or affirm falsely shall be deemed guilty of perjury."
19 & 20 Vict. c. 119 -	The Marriage and Registration Act, 1856.	Section three from "and if upon such oath" to the end of the section.
20 & 21 Vict. c. 85 -	The Matrimonial Causes Act, 1857 -	Section two from "and every person who shall knowingly" to the end of the section: and section eighteen.
21 & 22 Vict. c. 78 -	The Parliamentary Witnesses Act, 1858 -	Section fifty.
21 & 22 Vict. c. 90 -	The Medical Act, 1858 -	Section three.
22 Vict. c. 20 -	The Evidence by Commission Act, 1859 -	Section thirty-nine.
22 & 23 Vict. c. 17 -	The Vexatious Indictments Act, 1859 -	Section two.
24 & 25 Vict. c. 10 -	The Admiralty Court Act, 1861 -	In section one, the words "perjury, subornation of perjury."
24 & 25 Vict. c. 53 -	The University Elections Act, 1861 -	Section twenty-six from "and any person" to the end of the section.
25 & 26 Vict. c. 53 -	The Land Registry Act, 1862 -	In section five, the words "falsely making any such declaration as aforesaid, or such declaration as is contained in the Schedule, or," and the words "and any person wilfully making a false answer to any question put to him by the returning or other officer as hereinbefore provided."
25 & 26 Vict. c. 67 -	The Declaration of Title Act, 1862 -	In section one hundred and five, the words "make or assist or join in or be privy to the making of any material false statement or misrepresentation, or."
25 & 26 Vict. c. 103 -	The Union Assessment Committee Act, 1862.	In section forty-four, the words "make or assist or join in or be privy to the making of any material false statement or representation or."
26 & 27 Vict. c. 87 -	The Trustee Savings Banks Act, 1863 -	In section forty, the words "or who upon any examination before any such committee wilfully gives false evidence."
27 & 28 Vict. c. 25 -	The Naval Prize Act, 1864 -	Section forty-nine from "and if upon such oath" to the end of the section.
27 & 28 Vict. c. 114 -	The Improvement of Land Act, 1864 -	Section fifty.
28 & 29 Vict. c. 36 -	The County Voters Registration Act, 1865.	Section five.
29 & 30 Vict. c. 62 -	The Crown Lands Act, 1866 -	In section eleven, the words "and any person knowingly and wilfully making any false statement of fact in such declaration."
29 & 30 Vict. c. 108 -	The Railway Companies Securities Act, 1866.	Section twenty-nine.
29 & 30 Vict. c. 109 -	The Naval Discipline Act, 1866 -	In section seventeen, the words "on conviction thereof on indictment to fine or imprisonment, or," so far as relates to indictable offences under section sixteen of the same Act.
30 & 31 Vict. c. 84 -	The Vaccination Act, 1867 -	Section sixty-seven from "and where any such offence" to the end of the section.
30 & 31 Vict. c. 136 -	The Parliamentary Costs Act, 1867 -	Section thirty from "and every person" to the end of the section.
31 & 32 Vict. c. 24 -	The Capital Punishment Amendment Act, 1868.	Section two.
31 & 32 Vict. c. 45 -	The Sea Fisheries Act, 1868 -	Section nine.
31 & 32 Vict. c. 71 -	The County Courts Admiralty Jurisdiction Act, 1868.	Section thirty-two from "and any person who wilfully" to "guilty of perjury."
31 & 32 Vict. c. 119 -	The Regulation of Railways Act, 1868 -	Section nineteen from "and any person" to the end of the section.
31 & 32 Vict. c. 121 -	The Pharmacy Act, 1868 -	In section five, the words "on conviction thereof on indictment to fine and imprisonment, or."
31 & 32 Vict. c. 125 -	The Parliamentary Elections Act, 1868.	In section eight, the words "Any person who, when so examined on oath, makes any false statement, knowing the same to be false, shall be guilty of perjury."
32 & 33 Vict. c. 111 -	The Bishops Resignation Act, 1869.	Section fourteen from "and any person who shall" to "assisting him therein."
33 & 34 Vict. c. 102 -	The Naturalization Oath Act, 1870.	In section thirty-one, the words "and shall be subject to the same penalties for perjury."
34 & 35 Vict. c. 36 -	The Pensions Commutation Act, 1871 -	In section six, the words "and any person, when examined by such persons, who wilfully makes a false statement, whether on oath or not, shall be guilty of a misdemeanor."
34 & 35 Vict. c. 78 -	The Regulation of Railways Act, 1871.	Section two.
34 & 35 Vict. c. 83 -	The Parliamentary Witnesses Oaths Act, 1871.	In section nine, the words "shall be deemed to be guilty of a misdemeanor and" and the words "and to be imprisoned for any term not exceeding two years with or without hard labour."
35 & 36 Vict. c. 8 -	The Deans and Canons Resignation Act, 1872.	In section ten, the words "on conviction thereof on indictment to fine and imprisonment, or."
35 & 36 Vict. c. 93 -	The Pawnbrokers Act, 1872 -	In section one, the words "Any person examined as aforesaid who wilfully gives false evidence shall be liable to the penalties of perjury."
36 & 37 Vict. c. 60 -	The Extradition Act, 1873 -	Section four from "and any person" to "guilty of a misdemeanor."
37 & 38 Vict. c. 88 -	The Births and Deaths Registration Act, 1874.	Section twenty-nine from "If any person makes a declaration" to the end of the section.
38 & 39 Vict. c. 55 -	The Public Health Act, 1875 -	Section five from "Every person who" to "perjury."
38 & 39 Vict. c. 87 -	The Land Transfer Act, 1875 -	In section forty, subsection (1): and, in subsection (2), the words "wilfully makes any false certificate or declaration under or for the purposes of this Act or": and subsections (3) and (4).
38 & 39 Vict. c. 89 -	The Public Works Loans Act, 1875 -	Section two hundred and sixty-three.
		Section one hundred and one.
		Section forty-four from "when examined" to "false evidence or."

Session and Chapter.	Title or Short Title.	Extent of Repeal.
39 & 40 Vict. c. 36 41 & 42 Vict. c. 26	- The Customs Consolidation Act, 1876 - - The Parliamentary and Municipal Registration Act, 1878.	Section thirty-six from "and any witness" to "penalties thereof." In section twenty-five, the words "or knowingly and wilfully makes any false statement of fact in any declaration of the nature aforesaid."
41 & 42 Vict. c. 31 41 & 42 Vict. c. 33 43 & 44 Vict. c. 13	- The Bills of Sale Act, 1878 - - - - The Dentists Act, 1878 - - - - The Births and Deaths Registration (Ireland) Act, 1880.	Section seventeen from "Whoever" to the end of the section. Section thirty-five. In section thirty, subsection (1): and, in subsection (2), the words "wilfully makes any false certificate or declaration under or for the purposes of this Act, or"; and subsections (3) and (4).
43 & 44 Vict. c. 19	- The Taxes Management Act, 1880 -	In section sixty-three, the words "If any person wilfully and corruptly makes a false statement in any such oath of service he shall be guilty of misdemeanor, and shall be liable to imprisonment for six months with or without a fine not exceeding fifty pounds" (being subsection (4) of the said section).
43 & 44 Vict. c. 41	- The Burials Act, 1880 - - -	In section ten, the words "any person who shall wilfully make any false statement in such certificate and."
44 & 45 Vict. c. 62 45 & 46 Vict. c. 37 45 & 46 Vict. c. 50	- The Veterinary Surgeons Act, 1881 - - The Corn Returns Act, 1882 - - - - The Municipal Corporations Act, 1882 -	Section eleven. In section twelve, the words "false or." In section fifty-nine, the words "If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanor" (being subsection (3) of the said section).
45 & 46 Vict. c. 51	- The Government Annuities Act, 1882 -	In section ninety-four, the words "and shall be liable to the same penalties for perjury."
46 & 47 Vict. c. 51	- The Corrupt and Illegal Practices Prevention Act, 1883.	Section eleven from "If a person" to "twelve months" (being subsection (3) of the said section).
47 & 48 Vict. c. 54 47 & 48 Vict. c. 70 48 & 49 Vict. c. 54	- The Yorkshire Registries Act, 1884 - - The Municipal Elections (Corrupt and Illegal Practices) Act, 1884. - The Pluralities Act Amendment Act, 1885.	In section thirty-three, subsection (7), the words "and on conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury." Section forty-seven. In section twenty-one, subsection (5), the words "and on conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury."
50 & 51 Vict. c. 28 50 & 51 Vict. c. 47	- The Merchandise Marks Act, 1887 - - The Trustee Savings Banks Act, 1887 -	Section seven from "and every witness" to the end of the section. In section eight, subsection three, the words "on conviction on indictment to the penalties of perjury and."
51 & 52 Vict. c. 46 52 & 53 Vict. c. 10 52 & 53 Vict. c. 49 54 & 55 Vict. c. 70	- The Oaths Act, 1888 - - - - The Commissioners of Oaths Act, 1889 - - The Arbitration Act, 1889 - - - - The Markets and Fairs (Weighing of Cattle) Act, 1891.	In section two, the words "If any person on examination on oath or affirmation under this section wilfully gives false evidence, he shall be liable to the penalties for perjury" (being subsection (5) of the said section).
55 & 56 Vict. c. 23 57 & 58 Vict. c. 46	- The Foreign Marriage Act, 1892 - - - - The Copyhold Act, 1894 - - -	Section one from "and if any person" to the end of the section. Section seven. Section twenty-two. In section three, the words "false or."
59 & 60 Vict. c. 25 61 & 62 Vict. c. 48	- The Friendly Societies Act, 1896 - - - - The Benefices Act, 1898 - - -	Section fifteen. In section fifty-four, the words "If any person wilfully gives false evidence in any proceeding under this Act he shall be guilty of perjury" (being subsection (5) of the said section).
62 & 63 Vict. c. 23	- The Anchors and Chain Cables Act, 1899	In section eighty-seven, the words "false or." Section four from "For the declaration" to "perjury" (being subsection (4) of the said section).
2 Edw. 7. c. 8 2 Edw. 7. c. 17 6 Edw. 7. c. 40	- The Cremation Act, 1902 - - - - The Midwives Act, 1902 - - - - The Marriage with Foreigners Act, 1906	In section thirteen, the words "or (iii) make any false statement in a certificate of proof." In section eight, subsection two, the words "declaration or." Section eleven. Section one from "If a person knowingly" to "country or place" (being subsection (2) of the said section).
7 Edw. 7. c. 24 8 Edw. 7. c. 28	- The Limited Partnerships Act, 1907 - - The Agricultural Holdings Act, 1908 -	Section twelve. Section thirteen from "Any person who" to "punished accordingly" (being subsection (5) of the said section).
8 Edw. 7. c. 53 8 Edw. 7. c. 69	- The Law of Distress Amendment Act, 1908. - The Companies (Consolidation) Act, 1908	Section one from "and if any under tenant" to the end of the section. Section two hundred and eighteen: and, in section two hundred and eighty-one, the words "on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and," and the words "in either case."
9 Edw. 7. c. 49	- The Assurance Companies Act, 1909 -	In section twenty-four, the words "on conviction on indictment to fine and imprisonment, or."

## CHAPTER 7.

[MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1911.]

An Act to amend the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

[18th August 1911.]

Be it enacted, &amp;c.:

1. *Certain false statements concerning a candidate to be an illegal practice. Injunction against person making false statement.*—(1) Any person who, or the directors of any body or association corporate which, before or during any municipal election, shall, for the purpose of affecting the return of any candidate at such election, make or publish any false statement of fact in relation to the personal character or conduct of such candidate shall be guilty of an illegal practice within the meaning of the provisions of the Municipal Elections (Corrupt

and Illegal Practices) Act, 1884 [47 & 48 Vict. c. 70], and shall be subject to all the penalties for and consequences of committing an illegal practice in the said Act mentioned, and the said Act shall be taken to be amended as if the illegal practice defined by this Act had been contained therein.

(2) No person shall be deemed to be guilty of such illegal practice if he can show that he had reasonable grounds for believing, and did believe, the statement made by him to be true.

(3) Any person who shall make or publish any false statement of fact as aforesaid may be restrained by interim or perpetual injunction by the High Court of Justice from any repetition of such false statement or any false statement of a similar character in relation to such candidate, and, for the purpose of granting an interim injunction, *prima facie* proof of the falsity of the statement shall be sufficient.

(4) A candidate shall not be liable nor shall

be subject to any incapacity, nor shall his election be avoided, for any illegal practice under this Act committed by his agent, unless it can be shown that the candidate has authorised or consented to the committing of such illegal practice, or has paid for the circulation of the false statement constituting the illegal practice, or unless upon the hearing of an election petition the election court shall find and report that the election of such candidate was procured or materially assisted in consequence of the making or publishing of such false statements.

2. *Short title and construction.*] This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1911, and shall be construed as one with the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and that Act and this Act may be cited together as the Municipal Elections (Corrupt and Illegal Practices) Acts, 1884 and 1911.

**CHAPTER 8.**[MERCHANT SHIPPING (SEAMEN'S ALLOTMENT)  
ACT, 1911.]

An Act to remove certain doubts as to the true interpretation of the Merchant Shipping Acts, 1894 to 1906, in respect of the Payment of Seamen's Allotment Notes.

[18th August 1911.]

Whereas doubts have arisen as to the true interpretation of section one hundred and forty-one of the Merchant Shipping Act, 1894 [57 & 58 Vict., c. 60], and section sixty-two of the Merchant Shipping Act, 1906 [6 Edw. 7, c. 48]:

Be it therefore enacted, &c.:

**1. Regulations as to allotment note.]** By agreement with the master an allotment note may be granted to a seaman providing for—

- (a) payment of a greater sum than one-half of the wages;
- (b) payment at a period earlier than one month from the date of the agreement with the crew and at intervals more frequent than one month.

**2. Short title.]** This Act may be cited as the Merchant Shipping (Seamen's Allotment) Act, 1911.

**CHAPTER 9.**[PUBLIC LIBRARIES (ART GALLERIES IN COUNTY  
BOROUGH) (IRELAND) ACT, 1911.]

An Act to amend the Public Libraries (Ireland) Acts, 1855 to 1902, as respects the provisions of Art Galleries in County Boroughs and for other purposes incidental thereto.

[18th August 1911.]

**CHAPTER 10.**[INTESTATE HUSBAND'S ESTATE (SCOTLAND)  
ACT, 1911.]

An Act to amend the Law relating to the share of Intestate Husband's Estate falling to the Widow in Scotland.

[18th August 1911.]

**CHAPTER 11.**

[POULTRY ACT, 1911.]

An Act to enable Orders to be made under the Diseases of Animals Acts for protecting Live Poultry from unnecessary suffering, and for other purposes connected therewith.

[18th August 1911.]

Be it enacted, &c.:

**1. Power to make orders for protecting poultry from unnecessary suffering, &c.]**—(1) The Diseases of Animals Act, 1894, as amended by any subsequent enactment, shall have effect as if, among the purposes for which Orders may be made under section twenty-two of that Act, there were included the following purposes:—

- (a) for protecting live poultry from unnecessary suffering while being conveyed by land or water and in connection with their exposure for sale and their disposal after sale;
- (b) for requiring the cleansing or disinfection of receptacles or vehicles used for the conveyance of live poultry,

and, for the purposes of an Order made under this Act, the Diseases of Animals Act, 1894 [57 & 58 Vict., c. 57], shall be construed as if the expression "animals" included live poultry.

(2) An inspector, for the purpose of enforcing an Order under this Act, may examine any live poultry under any circumstances to which the Order relates and any receptacle or vehicle used for their conveyance; and may enter any vessel or premises in which he has reasonable grounds for supposing that there are live poultry in course of conveyance or packed for conveyance.

(3) The expression "poultry" includes domestic fowls, turkeys, geese, ducks, guinea-fowls, and pigeons.

**2. Short title.]** This Act may be cited as the Poultry Act 1911: and the Diseases of Animals

Acts, 1894 to 1909, and this Act may be cited together as the Diseases of Animals Act, 1894 to 1911.

**CHAPTER 12.**

[PUBLIC HEALTH (IRELAND) ACT, 1911.]

An Act to further amend the Public Health Acts relating to Ireland.

[18th August 1911.]

**CHAPTER 13.**

[PARLIAMENT ACT, 1911.]

An Act to make provision with respect to the powers of the House of Lords in relation to those of the House of Commons, and to limit the duration of Parliament.

[18th August 1911.]

Whereas it is expedient that provision should be made for regulating the relations between the two Houses of Parliament:

And whereas it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation:

And whereas provision will require hereafter to be made by Parliament in a measure effecting such substitution for limiting and defining the powers of the new Second Chamber, but it is expedient to make such provision as in this Act appears for restricting the existing powers of the House of Lords:

Be it therefore enacted, &c.:

**1. Powers of House of Lords as to Money Bills.]**—(1) If a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is so sent up to that House, the Bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified, notwithstanding that the House of Lords have not consented to the Bill.

(2) A Money Bill means a Public Bill which, in the opinion of the Speaker of the House of Commons, contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charge; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this subsection the expressions "taxation," "public money," and "loan" respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.

(3) There shall be endorsed on every Money Bill when it is sent up to the House of Lords and when it is presented to His Majesty for assent the certificate of the Speaker of the House of Commons signed by him that it is a Money Bill. Before giving his certificate, the Speaker shall consult, if practicable, two members to be appointed from the Chairmen's Panel at the beginning of each Session by the Committee of Selection.

**2. Restriction of the powers of the House of Lords as to Bills other than Money Bills.]**—(1) If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons in three successive Sessions (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the Session, is rejected by the House of Lords in each of those Sessions, that Bill shall, on its rejection for the third time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on

the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless two years have elapsed between the date of the second reading in the first of those Sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the third of those Sessions.

(2) When a Bill is presented to His Majesty for assent in pursuance of the provisions of this section, there shall be endorsed on the Bill the certificate of the Speaker of the House of Commons signed by him that the provisions of this section have been duly complied with.

(3) A Bill shall be deemed to be rejected by the House of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses.

(4) A Bill shall be deemed to be the same Bill as a former Bill sent up to the House of Lords in the preceding Session if, when it is sent up to the House of Lords, it is identical with the former Bill, or contains only such alterations as are certified by the Speaker of the House of Commons to be necessary owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the House of Lords in the former Bill in the preceding Session, and any amendments which are certified by the Speaker to have been made by the House of Lords in the third Session and agreed to by the House of Commons shall be inserted in the Bill as presented for Royal Assent in pursuance of this section:

Provided that the House of Commons may, if they think fit, on the passage of such a Bill through the House in the second or third Session, suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the House of Lords, and, if agreed to by that House, shall be treated as amendments made by the House of Lords and agreed to by the House of Commons; but the exercise of this power by the House of Commons shall not affect the operation of this section in the event of the Bill being rejected by the House of Lords.

**3. Certificate of Speaker.]** Any certificate of the Speaker of the House of Commons given under this Act shall be conclusive for all purposes, and shall not be questioned in any court of law.

**4. Enacting words.]**—(1) In every Bill presented to His Majesty under the preceding provisions of this Act, the words of enactment shall be as follows, that is to say:—

"Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Commons in this present Parliament assembled, in accordance with the provisions of the Parliament Act, 1911, and by authority of the same, as follows."

(2) Any alteration of a Bill necessary to give effect to this section shall not be deemed to be an amendment of the Bill.

**5. Provisional Order Bills excluded.]** In this Act the expression "Public Bill" does not include any Bill for confirming a Provisional Order.

**6. Saving for existing rights and privileges of the House of Commons.]** Nothing in this Act shall diminish or qualify the existing rights and privileges of the House of Commons.

**7. Duration of Parliament [1 Geo. 1, stat. 2, c. 38].** Five years shall be substituted for seven years as the time fixed for the maximum duration of Parliament under the Septennial Act, 1715.

**8. Short title.]** This Act may be cited as the Parliament Act, 1911.

**CHAPTER 14.**

[ISLE OF MAN (CUSTOMS) ACT, 1911.]

An Act to amend the Law with respect to Customs in the Isle of Man.

[18th August 1911.]



CHAPTER 15.

[APPROPRIATION ACT, 1911.]

An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March nineteen hundred and twelve, and to appropriate the Supplies granted in this Session of Parliament. [18th August 1911.]

CHAPTER 16.

[OLD AGE PENSIONS ACT, 1911.]

An Act to amend the Old Age Pensions Act, 1908. [18th August 1911.]

Be it enacted, &c.:

1. *Calculation of date of attaining age of seventy or sixty.*—For the purposes of the Old Age Pensions Act, 1908 [8 Edw. 7, c. 40] (in this Act referred to as "the principal Act"), a person shall be deemed, according to the law in Scotland, as well as according to the law in England and Ireland, to have attained the age of seventy or sixty on the commencement of the day previous to the seventieth or sixtieth anniversary, as the case may be, of the day of his birth.

2. *Calculation of means.*—(1) In calculating, for the purpose of the principal Act, the means of a person, account shall be taken of—

- (a) the yearly value of any property belonging to that person (not being property personally used or enjoyed by him) which is invested, or is otherwise put to profitable use by him, or which, though capable of investment or profitable use, is not so invested or put to profitable use by him, the yearly value of that property being taken to be one-twentieth part of the capital value thereof;
- (b) the income which that person may reasonably expect to receive during the succeeding year in cash, excluding any sums receivable on account of an old age pension under this Act, and excluding any sums arising from the investment or profitable use of property (not being property personally used or enjoyed by him), that income, in the absence of other means for ascertaining the income, being taken to be the income actually received during the preceding year;
- (c) the yearly value of any advantage accruing to that person from the use or enjoyment of any property belonging to him which is personally used or enjoyed by him, except furniture and personal effects in a case where the total value of the furniture and effects does not exceed fifty pounds; and
- (d) the yearly value of any benefit or privilege enjoyed by that person:

Provided that, where under paragraph (a) of the foregoing provisions the yearly value of any property is taken to be one-twentieth part of the capital value thereof, no account shall be taken under any other of those provisions of any appropriation of that property for the purpose of current expenditure.

(2) In calculating the means of a person being one of a married couple living together in the same house, the means shall be taken to be half the total means of the couple.

(3) The foregoing provisions of this section shall be substituted for subsections (1) and (2) of section four of the principal Act.

3. *Provisions as to nationality and residence.*—Notwithstanding anything in the principal Act—

- (1) the condition as to nationality imposed by paragraph (2) of section two of the principal Act shall not be required to be fulfilled in the case of a woman who satisfies the pension authorities that she would, but for her marriage with an alien, have fulfilled the condition, and that, at the date of the receipt of any sum on account of a pension, the alien is dead, or the marriage with the alien has been dissolved or annulled, or she has, for a period of not less than two years up to

the said date, been legally separated from, or deserted by, the alien:

- (2) it shall be a statutory condition for the receipt of an old age pension by any person, that the person must satisfy the pension authorities that for at least twelve years in the aggregate out of the twenty years up to the date of the receipt of any sum on account of a pension he has had his residence in the United Kingdom:

Provided that for the purposes of computing the twelve years' residence in the United Kingdom under this provision—

- (a) any periods spent abroad in any service under the Crown, the remuneration for which is paid out of moneys provided by Parliament, or as the wife or servant of a person in any such service so remunerated; and
- (b) any periods spent in the Channel Islands or the Isle of Man by a person born in the United Kingdom; and
- (c) any periods spent abroad by any person during which that person has maintained or assisted in maintaining any dependent in the United Kingdom; and
- (d) any periods of absence spent in service on board a vessel registered in the United Kingdom by a person who before his absence on that service was living in the United Kingdom; and
- (e) any periods of temporary absence not exceeding three months in duration at any one time;

shall be counted as periods of residence in the United Kingdom.

4. *Amendments of section 3 of the principal Act.*—(1) Any rule of law and any enactment, the effect of which is to cause relief given to or in respect of a wife or relative to be treated as relief given to the person liable to maintain the wife or relative, shall not have effect for the purposes of section three of the principal Act (which relates to disqualification).

(2) Two years shall be substituted for ten years as the further period of disqualification under subsection (2) of section three of the principal Act, both as respects persons convicted before the passing of this Act, and, as respects persons convicted after the passing of this Act, in cases where the term for which a person has been ordered to be imprisoned without the option of a fine does not exceed six weeks.

(3) Any person in receipt of an old age pension who is convicted of any offence which is mentioned in or deemed to be mentioned or included in the First Schedule to the Inebriated Act, 1898 [61 & 62 Vict., c. 60], shall, if not subject to disqualification under the principal Act, be disqualified for receiving or continuing to receive an old age pension for a period of six months after the date of his conviction, unless the court before whom he is convicted direct to the contrary.

5. *Limitations with respect to the payment of old age pensions.*—A sum shall not be paid on account of an old age pension—

- (a) to any person while absent from the United Kingdom; or
- (b) if payment of the sum is not obtained within three months after the date on which it has become payable.

6. *Amendments with respect to the raising and determination of questions as to old age pensions.*—(1) It is hereby declared that a question may be raised at any time—

- (a) whether at any time or during any period a person has been in receipt of an old age pension when the statutory conditions were not fulfilled, or when he was disqualified for receiving the pension; and
- (b) whether a person has been at any time or during any period in receipt of a pension at a certain rate when his means exceeded the amount which justified the payment of a pension at that rate, and, if so, at what rate the pension, if any, should have been paid; and
- (c) whether a person who is in receipt of a

pension at a certain rate is, having regard to his means, entitled to a pension at a higher or a lower rate, and, if so, at what rate the pension (if any) should be paid;

and that an application may be made at any time to alter or revoke a provisional allowance of a claim for a pension.

(2) Section seven of the principal Act shall apply to any such question or application as it applies to the questions mentioned in that section.

(3) Any such question may be raised notwithstanding that the decision of the question involves a decision as to the correctness of a former decision of the local pension committee or central pension authority, as the case may be, but, where by a later decision a former decision is reversed, a person who has received any sums on account of an old age pension in accordance with the former decision shall, notwithstanding anything in subsection (2) of section nine of the principal Act, in the absence of any fraud on his part, be entitled to retain any sum so received up to the date of the later decision which he would have been entitled to retain but for the reversal of the former decision.

(4) Where a question is raised as to the disqualification of a person to receive an old age pension, and it is alleged that the disqualification has arisen since the person has been in receipt of the pension, and that the disqualification is continuing at the time the question is raised, or, if it has ceased, has ceased less than three weeks before that time, the payment of the pension shall be discontinued, and no sum shall be paid to the pensioner on account of the pension after the date on which the question is raised: Provided that, if the question is decided in favour of the pensioner, he shall be entitled to receive all sums which would have been payable to him if the question had not been raised.

(5) If the decision on any question involves the discontinuance of an old age pension, or the reduction of the rate at which the pension is paid, or if, in a case where the payment of the pension has been discontinued on the raising of the question, the question is not decided in favour of the pensioner, the person in respect of whose pension the decision is given shall not be entitled to receive a pension or to receive a pension at a rate higher than that determined by the committee or authority, as the case may be, notwithstanding any change of circumstances, unless he makes a fresh claim for the purpose and the claim is allowed, or, in a case where he alleges that he is entitled to receive a pension at a higher rate, raises a question for the purpose and the pension is allowed at a higher rate.

(6) It is hereby declared that a pension officer, if dissatisfied with any refusal or neglect of a local pension committee to consider a claim or determine a question, has, under paragraph (d) of subsection (1) of section seven of the principal Act, a right to apply to the central pension authority as a person aggrieved within the meaning of that provision.

7. *Amendments of section 9 of principal Act.*

—(1) Subsection (2) of section nine of the principal Act shall apply, with the necessary modifications, to cases where an old age pension is received at a higher rate than that appropriate to the case, as it applies to cases where a person has been in receipt of an old age pension while the statutory conditions were not fulfilled.

(2) For the purposes of subsection (2) of section nine of the principal Act and this section, any decision of the local pension committee under section seven of the principal Act on any question which is not referred to the central pension authority and the decision of the central pension authority on any question which is referred to them under that section shall be conclusive proof of any matters decided by the committee or the authority.

A copy of any decision of the local pension committee or central pension authority, if authenticated in manner provided by regulations to be made for the purpose under section ten of the principal Act, shall be received in evidence.

(3) Where any person who is in receipt of an old age pension is liable to repay to the Treasury

any sums under subsection (2) of section nine of the principal Act in consequence of the finding of a local pension committee, or of the central pension authority in the case of a question referred to them, the Treasury shall be entitled, without prejudice to their powers under that subsection, to direct the deduction of those sums from any sums to which that person becomes entitled on account of an old age pension, in manner to be provided by regulations to be made for the purpose under section ten of the principal Act:

Provided that, in the case of a personal representative, the deduction shall only be made from any sums to which that person becomes entitled as a personal representative.

(4) A court of summary jurisdiction in Ireland shall have the same power as a court of summary jurisdiction in England, in the case of a person convicted for an offence under subsection (1) of section nine of the principal Act, to impose a fine not exceeding twenty-five pounds instead of imprisonment, if they think that the justice of the case would be better met by a fine than by imprisonment.

8. *Saving for existing pensioners.* The provisions of this Act modifying the statutory conditions for the receipt of an old age pension shall not operate—

(a) so as to disentitle any person who is in receipt of such a pension at the time of the commencement of this Act to continue to receive his pension; or

(b) so as to reduce the rate of pension to which such a person is entitled.

9. *Short title and construction.*—(1) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(2) Any reference in this Act to the principal Act or any enactment therein shall, unless the context otherwise requires, be construed as references to that Act or enactment as amended by this Act.

(3) This Act shall be read as one with the principal Act, and may be cited as the Old Age Pensions Act, 1911; and this Act and the principal Act may be cited together as the Old Age Pensions Acts, 1908 and 1911.

#### SCHEDULE.

[Section 9.]

#### ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
8 Edw. 7. c. 40	The Old Age Pensions Act, 1908.	In paragraph (2) of section two the words "and has had his residence as defined by regulations under this Act in the United Kingdom"; subsections (1) and (2) of section four; and the words "and for defining the meaning of residence for the purposes of this Act" in paragraph (a) of subsection (1) of section ten.

#### CHAPTER 17.

[PUBLIC WORKS LOANS ACT, 1911.]

An Act to grant Money for the purpose of certain Local Loans out of the Local Loans Fund, and for other purposes relating to Local Loans.

[18th August 1911.]

#### CHAPTER 18.

[INDIAN HIGH COURTS ACT, 1911.]

An Act to amend the Indian High Courts Act, 1861.

[18th August 1911.]

Be it enacted, &c.:

1. *Increase of number of judges of High Court.* The maximum number of judges of a High Court of Judicature in India, including the Chief Justice, shall be twenty, and section two of the Indian High Courts Act, 1861 [24 & 25 Vict. c. 104], shall have effect accordingly.

2. *Power to establish additional High Courts.* The power of His Majesty under section sixteen of the Indian High Courts Act, 1861, may be exercised from time to time, and a High Court may be established under that section in any portion of the territories within His Majesty's dominions in India, whether or not included within the limits of the local jurisdiction of another High Court; and, where such a High Court is established in any part of such territories included within the limits of the local jurisdiction of another High Court, it shall be lawful for His Majesty by letters patent to alter the local jurisdiction of that other High Court and to make such incidental, consequential, and supplemental provisions as may appear to be necessary by reason of the alteration of those limits.

3. *Power to appoint temporary judges.* Subject to the provisions of section two of the Indian High Courts Act, 1861, as amended by this Act, regulating the number and qualifications of judges, it shall be lawful for the Governor-General in Council to appoint from time to time persons to act as additional judges of any High Court for such period not exceeding two years as may be required, and the judges so appointed shall, whilst so acting, have all the powers of a judge of the High Court appointed by His Majesty under section two of the said Act: Provided that such additional judges shall not be taken into account in determining the proportions specified in the proviso to that section.

4. *Salaries.* The salaries of any judges or temporary judges appointed under this Act shall be paid out of the Revenues of India.

5. *Short title.* This Act may be cited as the Indian High Courts Act, 1911, and shall be construed as one with the Indian High Courts Act, 1861 [23 & 29 Vict. c. 15], and that Act and the Indian High Courts Act, 1865, and this Act, may be cited together as the Indian High Courts Acts, 1861 to 1911.

#### CHAPTER 19.

[LABOURERS (IRELAND) ACT, 1911.]

An Act to amend the Law relating to Labourers in Ireland.

[18th August 1911.]

#### CHAPTER 20.

[GENEVA CONVENTION ACT, 1911.]

An Act to make such amendments in the Law as are necessary to enable certain reserved provisions of the Second Geneva Convention to be carried into effect.

[18th August 1911.]

Whereas His Majesty has ratified, with certain reservations, the Convention for the amelioration of the condition of the wounded and sick of armies in the field, drawn up in Geneva in the year one thousand nine hundred and six, and it is desirable, in order that those reservations may be withdrawn, that such amendments should be made in the law as are in this Act contained:

Be it therefore enacted, &c.:

1. *Prohibition of use of emblem of red cross on white ground, &c.*—(1) As from the commencement of this Act it shall not be lawful for any person to use for the purposes of his trade or business, or for any other purpose whatsoever, without the authority of the Army Council, the heraldic emblem of the red cross on a white ground formed by reversing the Federal colours

of Switzerland, or the words "Red Cross" or "Geneva Cross," and, if any person acts in contravention of this provision, he shall be guilty of an offence against this Act, and shall be liable on summary conviction to a fine not exceeding ten pounds, and to forfeit any goods upon or in connection with which the emblem or words were used.

(2) Where a company or society is guilty of any such contravention, without prejudice to the liability of the company or society, every director, manager, secretary, and other officer of the company or society who is knowingly a party to the contravention shall be guilty of an offence against this Act and liable to the like penalty.

(3) Nothing in this section shall affect the right (if any) of the proprietor of a trade mark registered before the passing of this Act, and containing any such emblem or words, to continue to use such trade mark for a period of four years from the passing of this Act, and, if the period of the registration or of the renewal of registration of any such trade mark expires during those four years, the registration thereof may be renewed until the expiration of those four years, but without payment of any fee.

(4) Proceedings under this Act shall not in England or Ireland be instituted without the consent of the Attorney-General.

(5) This Act shall extend to His Majesty's possessions outside the United Kingdom, subject to such necessary adaptations as may be made by Order in Council.

2. *Short title.* This Act may be cited as the Geneva Convention Act, 1911.

#### CHAPTER 21.

[FACTORY AND WORKSHOP (COTTON CLOTH FACTORIES), ACT, 1911.]

An Act to give power to make Regulations with respect to Cotton Cloth Factories.

[18th August 1911.]

Be it enacted, &c.:

1. *Power to make regulations as to cotton cloth factories.*—(1) The Secretary of State may make regulations for the purpose of giving effect to such of the recommendations contained in the Second Report, dated January nineteen hundred and eleven, of the Committee appointed by the Secretary of State, on the twenty-seventh day of November, nineteen hundred and seven, to inquire into the question of humidity and ventilation in cotton cloth factories, as he may deem necessary for the protection of health in cotton cloth factories.

(2) Any regulations so made shall have effect as if embodied in Part V. of the Factory and Workshop Act, 1901 [1 Edw. 7. c. 22] (in this Act referred to as the principal Act), and may be substituted for the provisions contained in sections ninety, ninety-one, ninety-two, ninety-four, and the Fourth Schedule of the principal Act, or any of those provisions, and those provisions or any of them for which regulations are so substituted shall cease to apply to cotton cloth factories.

(3) Section ninety-five of the principal Act shall apply to any contravention of or non-compliance with any regulations made under this Act, and, both in its application to those regulations and in its application to the provisions of that Act, shall be read as if twenty-four months were substituted for twelve months.

2. *Short title.* This Act may be cited as the Factory and Workshop (Cotton Cloth Factories) Act, 1911, and shall be construed as one with the Factory and Workshop Acts, 1901 [1 Edw. 7. c. 22], and 1907 [7 Edw. 7. c. 39]; and this Act and those Acts may be cited together as the Factory and Workshop Acts, 1901 to 1911.

#### CHAPTER 22.

[EXPIRING LAWS CONTINUANCE ACT, 1911.]

An Act to continue various Expiring Laws.

[18th August 1911.]

Whereas the Acts mentioned in the Schedule to this Act are, in so far as they are in force

and are temporary in their duration, limited to expire on the thirty-first day of December, nineteen hundred and eleven :

And whereas it is expedient to provide for the continuance as in this Act mentioned of those Acts, and of the enactments amending or affecting the same :

Be it therefore enacted, &c. :

**1. Continuance of Acts in Schedule.]—(1)**

The Acts mentioned in Part I. of the Schedule to this Act shall, to the extent specified in column three of that Schedule, be continued until the thirty-first day of December, nineteen hundred and twelve, and shall then expire, unless further continued.

(2) The Acts mentioned in Part II. of the Schedule to this Act shall, to the extent specified in column three of that Schedule, be continued until the thirty-first day of March, nine-

teen hundred and thirteen, and shall then expire, unless further continued.

(3) Any unrepealed enactments amending or affecting the enactments continued by this Act shall, in so far as they are temporary in their duration, be continued in like manner, whether they are mentioned in the Schedule to this Act or not.

**2. Short title.]** This Act may be cited as the Expiring Laws Continuance Act, 1911.

**SCHEDULE.**

**[Section 1.]**

**PART I.**

1. Session and Chapter.	2. Short Title.	3. How far continued.	4. Amending Acts.
(1) 3 & 4 Vict. c. 89 -	The Poor Rate Exemption Act, 1840 - . . .	The whole Act.	—
(2) 3 & 4 Vict. c. 91 -	The Textile Manufactures (Ireland) Act, 1840 - . . .	The whole Act - . . . .	5 & 6 Vict. c. 68 30 & 31 Vict. c. 60
(3) 4 & 5 Vict. c. 30 -	The Ordnance Survey Act, 1841 - . . . .	The whole Act - . . . .	33 Vict. c. 13 47 & 48 Vict. c. 43 52 & 53 Vict. c. 30
(4) 10 & 11 Vict. c. 98 -	The Ecclesiastical Jurisdiction Act, 1847 - . . .	As to the provisions continued by 21 & 22 Vict. c. 50.	—
(5) 14 & 15 Vict. c. 104 -	The Episcopal and Capitular Estates Act, 1851 - . . .	The whole Act - . . . .	17 & 18 Vict. c. 116 21 & 22 Vict. c. 94 22 & 23 Vict. c. 46 23 & 24 Vict. c. 124 31 & 32 Vict. c. 114 s. 10
(6) 17 & 18 Vict. c. 102 -	The Corrupt Practices Prevention Act, 1854 - . . .	So much as is continued by the Corrupt and Illegal Practices and Prevention Act, 1883.	26 & 27 Vict. c. 29, s. 6 31 & 32 Vict. c. 125 46 & 47 Vict. c. 51
(7) 26 & 27 Vict. c. 105 -	The Promissory Notes Act, 1863 - . . . .	The whole Act - . . . .	45 & 46 Vict. c. 61
(8) 27 & 28 Vict. c. 20 -	The Promissory Notes (Ireland) Act, 1864 - . . .	The whole Act.	—
(9) 28 & 29 Vict. c. 46 -	The Militia (Ballot Suspension) Act, 1865 - . . .	The whole Act - . . . .	45 & 46 Vict. c. 49
(10) 28 & 29 Vict. c. 83 -	The Locomotives Act, 1865 - . . . .	The whole Act - . . . .	41 & 42 Vict. c. 58 41 & 42 Vict. c. 77 (Part II.) 59 & 60 Vict. c. 36 61 & 62 Vict. c. 29
(11) 31 & 32 Vict. c. 125 -	The Parliamentary Elections Act, 1868 - . . .	So much as is continued by the Corrupt and Illegal Practices Pre- vention Act, 1883.	42 & 43 Vict. c. 75 46 & 47 Vict. c. 51
(12) 32 & 32 Vict. c. 21 -	The Corrupt Practices Commission Expenses Act, 1869.	The whole Act . . . . .	34 & 35 Vict. c. 61
(13) 32 & 33 Vict. c. 56 -	The Endowed Schools Act, 1869 - . . . .	As to the powers of making schemes -	36 & 37 Vict. c. 87 37 & 38 Vict. c. 87 52 & 53 Vict. c. 40 8 Edw. 7. c. 39
(14) 33 & 34 Vict. c. 112 -	The Globe Loan (Ireland) Act, 1870 - . . . .	The whole Act - . . . .	34 & 35 Vict. c. 100 49 Vict. c. 6
(15) 34 & 35 Vict. c. 87 -	The Sunday Observation Prosecution Act, 1871 - . . .	The whole Act.	—
(16) 35 & 36 Vict. c. 33 -	The Ballot Act, 1872 - . . . .	The whole Act - . . . .	45 & 46 Vict. c. 50. (Municipal Elections.)
(17) 38 & 39 Vict. c. 84 -	The Parliamentary Elections (Returning Officers) Act, 1875.	The whole Act - . . . .	46 & 47 Vict. c. 51, s. 32 48 & 49 Vict. c. 62 49 & 50 Vict. c. 57
(18) 39 & 40 Vict. c. 21 -	The Jurors Qualification (Ireland) Act, 1876 - . . .	The whole Act - . . . .	57 & 58 Vict. c. 49 61 & 62 Vict. c. 37, s. 69
(19) 41 & 42 Vict. c. 41 -	The Parliamentary Elections Returning Officers Expenses (Scotland) Act, 1878.	The whole Act - . . . .	48 & 49 Vict. c. 62 49 & 50 Vict. c. 58 54 & 55 Vict. c. 49
(20) 43 Vict. c. 18 -	The Parliamentary Elections and Corrupt Practices Act, 1880.	The whole Act - . . . .	46 & 47 Vict. c. 51
(21) 43 & 44 Vict. c. 42 -	The Employers' Liability Act, 1880 - . . . .	The whole Act - . . . .	6 Edw. 7. c. 58, s. 14
(22) 46 & 47 Vict. c. 51 -	The Corrupt and Illegal Practices Prevention Act, 1883.	The whole Act - . . . .	58 & 59 Vict. c. 40



1. Session and Chapter.	2. Short Title.	3. How far continued.	4. Amending Acts.
(23) 47 & 48 Vict. c. 70	The Municipal Elections (Corrupt and Illegal Practices) Act, 1884.	The whole Act	56 & 57 Vict. c. 73
(24) 49 & 50 Vict. c. 29	The Crofters Holdings (Scotland) Act, 1886	As to the powers of the Commissioners for the enlargement of holdings, s. 22.	50 & 51 Vict. c. 24 51 & 52 Vict. c. 63 54 & 55 Vict. c. 41
(25) 51 & 52 Vict. c. 55	The Sand Grouse Protection Act, 1888	The whole Act.	—
(26) 52 & 53 Vict. c. 40	The Welsh Intermediate Education Act, 1889	As to the powers of the joint education committee and the suspension of the powers of the Charity Commissioners.	53 & 54 Vict. c. 60
(27) 58 & 59 Vict. c. 21	The Seal Fisheries (North Pacific) Act, 1895	The whole Act.	—
(28) 59 Vict. c. 1	The Local Government (Elections) Act, 1896	The whole Act.	—
(29) 59 & 60 Vict. c. 48	The Light Railways Act, 1896	As to the powers of the Light Railway Commissioners.	—
(30) 61 & 62 Vict. c. 49	The Vaccination Act, 1898	The whole Act	7 Edw. 7. c. 31
(31) 2 Edw. 7. c. 18	The Licensing (Ireland) Act, 1902	The whole Act.	—
(32) 3 Edw. 7. c. 36	The Motor Car Act, 1903	The whole Act.	—
(33) 4 Edw. 7. c. 24	The Wireless Telegraphy Act, 1904	The whole Act.	—
(34) 5 Edw. 7. c. 18	The Unemployed Workmen Act, 1905	The whole Act.	—
(35) 7 Edw. 7. c. 55	The London Cab and Stage Carriage Act, 1907	As to the abolition of the privileged cab system, s. 2.	—
(36) 7 Edw. 7. c. 56	The Evicted Tenants (Ireland) Act, 1907	So far as it confers powers for the acquisition of land and for the determination of tenancies.	8 Edw. 7. c. 22
(37) 8 Edw. 7. c. 58	The Local Registration of Title (Ireland) Amendment Act, 1908.	The whole Act.	—

## PART II.

(38) 59 & 60 Vict. c. 16	The Agricultural Rates Act, 1896	The whole Act.	—
(39) 59 & 60 Vict. c. 37	The Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896.	The whole Act.	—

## CHAPTER 23.

[NATIONAL GALLERY AND ST. JAMES'S PARK  
ACT, 1911.]

An Act to appropriate certain lands for the purposes of the National Gallery and the National Portrait Gallery and for other purposes connected therewith, and to make provision with respect to certain Crown lands forming part of or adjacent to St. James's Park. [18th August 1911.]

Whereas it is expedient to appropriate for the purposes of the National Gallery and the National Portrait Gallery and for other purposes connected therewith certain pieces of land heretofore used for the purposes of St. George's Barracks:

And whereas one of the said pieces of land is vested in His Majesty, and is under the management of the Commissioners of Woods, and the others of the said pieces of land are vested in the Secretary of State for the War Department:

And whereas it is expedient that for the purposes aforesaid the said pieces of land should be vested in the Commissioners of Works:

And whereas the said pieces of land are delineated on a plan signed by the Right Honourable William, Earl Beauchamp, First Commissioner of Works, and deposited at the Office of the Commissioners of Works (in this Act referred to as the deposited plan No. 1), and thereon coloured, as to the piece of land vested in His Majesty, blue, and, as to the pieces of land vested in the said Secretary of State, yellow:

And whereas another plan (in this Act referred to as the deposited plan No. 2) has been signed by the said Right Honourable William, Earl of Beauchamp, and deposited at the Office of the Commissioners of Works:

And whereas the piece of land coloured green on the deposited plan No. 2 (which piece of land is in this Act referred to as "the Park land") is vested in His Majesty as part of the hereditary land revenues of the Crown and forms part of St. James's Park, and is under the management of the Commissioners of Works:

And whereas the pieces of land coloured pink and the pieces of land hatched blue on the deposited plan No. 2 (which pieces of land are in this Act referred to as "the leased land") are vested in His Majesty as part of the hereditary land revenues of the Crown, subject, however, to the leasehold interest therein of the London County Council for a term expiring on the fifth day of April, nineteen hundred and fifty-eight:

And whereas for the purpose of certain works and alterations in St. James's Park it is expedient that the leased land should be thrown into and become part of St. James's Park, and that in consideration of the surrender by the London County Council of their leasehold interest in the leased land, the Commissioners of Woods should be empowered to grant to the Council a lease of the Park land:

Be it therefore enacted, &c.:

1. Vesting of certain land adjoining National Gallery in Commissioners of Works.—(1) All estate and interest of the Secretary of State for

the War Department in the lands coloured yellow on the deposited plan No. 1 shall, by virtue of this Act on and after the passing of this Act, become vested in the Commissioners of Works.

(2) The land coloured blue on the deposited plan No. 1 shall, by virtue of this Act on and after the passing of this Act, vest in the Commissioners of Works for all the estate and interest of His Majesty therein, and shall accordingly thereafter be under the management of the Commissioners of Works.

2. Appropriation of lands for purposes of National Gallery and National Portrait Gallery.]

The said lands delineated on the deposited plan No. 1 shall be appropriated for the purposes of the National Gallery and the National Portrait Gallery, or for the purposes of one or other of those Galleries, in such manner as the Commissioners of Works determine:

Provided that the Commissioners of Works may—

(a) till such time as the said lands are required for the said purposes, employ the said lands for such other public purposes as they think fit; and

(b) with the consent of the Treasury, appropriate any part of the said lands for the purpose of forming or widening public highways adjoining the said Galleries.

3. Consideration payable to His Majesty in respect of Crown lands.] The sum payable to His Majesty by way of consideration in respect of the estate and interest of His Majesty in the land coloured blue on the deposited plan No. 1 shall

be forthwith ascertained in accordance with the provisions of this section by a surveyor to be appointed for the purpose by the Treasury, and, whenever the income of the land revenues of the Crown ceases to be carried to and to form part of the Consolidated Fund and is retained by the Crown as part of its hereditary revenues, the sum so ascertained shall be paid to the Commissioners of Woods out of the Consolidated Fund, and shall be carried to the account of the capital of the land revenues of the Crown, and applied as part thereof.

For the purpose of ascertaining the sum payable under this section, the said land shall be taken to be divested of any buildings existing thereon.

**4. Power of Commissioners of Woods to dispose of piece of land forming part of St. James's Park, and land surrendered by London County Council to become part of St. James's Park.]—**

(1) In the event of the London County Council surrendering to His Majesty all the interest of the Council in the leased land—

(a) The Park land shall cease to form part of St. James's Park, and the management thereof shall be transferred from the Commissioners of Woods to the Commissioners of Works to the Commissioners of Woods, and accordingly all the powers of the Commissioners of Woods under the Crown Lands Acts, 1829 to 1906, shall apply to the Park land as they apply to the possessions and land revenues of the Crown which do not form part of a Royal Park; and

(b) The leased land shall, on the surrender by the London County Council of their interest therein, become part of St. James's Park, and accordingly thereafter be under the management of the Commissioners of Works.

(2) Nothing in this section shall be taken to affect or prejudice in any manner so much of an agreement made the eleventh day of April, nineteen hundred and ten between George Granville Leveson Gower, a Commissioner of Woods, of the first part, the London County Council of the second part, and the Commissioners of Works of the third part, as provides for the enjoyment by the said George Granville Leveson Gower, as such Commissioner, and by the London County Council, of certain ways, lights, and other easements mentioned in the agreement.

**5. Short title.]** This Act may be cited as the National Gallery and St. James's Park Act, 1911.

## CHAPTER 24.

### [PENSIONS (GOVERNORS OF DOMINIONS, &c.) ACT, 1911.]

An Act to consolidate and amend the Law relating to the payment of Pensions to Governors of any part of His Majesty's Dominions, or any British Protectorate, or persons holding a similar office,

[18th August 1911.]

Be it enacted, &c. :

**1. Power to grant pensions to Governors.]—**

(1) Subject to the provisions of this Act, the Secretary of State may, with the approval of the Treasury, by writing under his hand, grant a pension to any Governor within the meaning of this Act who has completed not less than ten years' service as such a Governor, and has either—

- (a) attained the age of sixty years; or
- (b) become, in the opinion of the Secretary of State, incapable of discharging the duties of his office by reason of some infirmity of mind or body which is likely to become permanent; or
- (c) retired, or been removed, from his office in consequence of the abolition thereof.

(2) The decision of the Secretary of State, confirmed by the Treasury, with respect to the claim of any person to a pension under this Act shall be final.

**2. Calculation of amount of pension.]** The amount of pension under this Act for Governors within the meaning of this Act shall be calculated in accordance with the following rules:—

- (1) Governorships within the meaning of this Act shall be divided for the purposes of

pension into four classes, to be called Class I., Class II., Class III., and Class IV. The division shall be made by order of the Secretary of State approved by the Treasury and laid before Parliament, and any order so made may be revoked or varied by an order made in a similar manner:

- (2) The unit of pension for every completed month's service as Governor shall be five pounds for Class I., four pounds for Class II., three pounds for Class III., and two pounds for Class IV.:
- (3) Where a Governor's service has been in one class only, the yearly amount of his pension shall be the amount produced by multiplying the unit of pension for that class by the number of completed months' service:
- (4) Where a Governor's service has been in more than one class, the unit of pension for each class in which he has served shall be multiplied by the number of completed months' service in that class, and the yearly amount of the pension shall be the sum of the amounts so produced.

**3. Provisions as to holding other pensions with Governor's pension.]** A pension may be granted in respect of service in the permanent Civil Service of the State, under the Superannuation Acts, 1834 to 1909, to any Governor within the meaning of this Act who is entitled to receive a pension under this Act, in the same manner and subject to the same provisions, as far as applicable, as if, on the completion of that service, he had retired on the ground of ill-health, and any pension so granted to him or granted to him in respect of any other service may be held by him in addition to his pension under this Act, subject to the provisions of this Act as to the maximum yearly amount of the pension to be received.

**4. Maximum amount of pension.]—**(1) The yearly amount of a pension under this Act shall not exceed thirteen hundred pounds.

(2) Where a person is entitled to receive a pension under this Act, and is also in receipt of any other sum by way of pension granted in respect of employment in the service of the Crown—

- (a) he shall not receive the pension under this Act so long as the yearly amount of the other sum so received is thirteen hundred pounds or upwards; and
- (b) if the yearly amount of the other sum so received is less than thirteen hundred pounds he shall not receive a greater sum in respect of the pension under this Act than the difference between that yearly amount and thirteen hundred pounds.

**5. Reckoning of Governor's service for Civil Service pension in certain cases, and provision as to gratuity on death while serving as Governor.]—**

(1) Where any person having served as a Governor within the meaning of this Act, and having likewise been employed in service in the permanent Civil Service of the State, has not become entitled to receive a pension under this Act in respect of his service as Governor, the number of years served by him as Governor shall, for the purpose of computing any pension which may be granted to him under the Superannuation Acts, 1834 to 1909, be deemed to have been passed in service in the permanent Civil Service of the State and at the rate of salary last received by him in respect of his employment in that Service (emoluments being reckoned for this purpose as salary).

(2) Where a Governor within the meaning of this Act who was immediately before his appointment as Governor employed in the permanent Civil Service of the State dies while he is Governor, subsection (1) of section two of the Superannuation Act, 1909 [9 Edw. 7, c. 10] (which provides for a gratuity in case of death in certain cases), shall apply in his case as if he was at the time of his death employed in the permanent Civil Service of the State at the rate of salary last received by him in respect of his employment in that service (emoluments being reckoned for this purpose as salary).

For the purposes of this provision, employment in the permanent Civil Service of a colony shall not be deemed to be employment in the permanent Civil Service of the State, notwithstanding anything in section two of the Pensions (Colonial Service) Act, 1887 [50 & 51 Vict., c. 13].

**6. Deduction from pension on account of salary or emolument other than pension.]** If any person to whom a pension has been granted under this Act is, or thereafter becomes, entitled to any salary or other emolument from any public revenue raised, or in respect of any public services performed, within His Majesty's dominions (other than a pension), his pension under this Act shall be reduced by half the amount of the salary or emolument.

**7. Advancement to higher rate of pension.]** If any person to whom a pension has been granted under this Act becomes by reason of re-employment entitled to a pension of an increased yearly amount under this Act the Secretary of State may, with the approval of the Treasury, and subject to the maximum yearly amount of a pension under this Act, by writing under his hand, grant him a pension of an increased yearly amount.

**8. Obligation to accept re-employment till age of sixty, and continue in office till age of sixty-five.]** If any person who has served as a Governor within the meaning of this Act, and has not attained the age of sixty, is called upon by His Majesty to undertake any Governorship within the meaning of this Act, and, not being incapable from infirmity of mind or body of executing the duties of the office, refuses to undertake the Governorship, or if any such person, not being of the full age of sixty-five, relinquishes any such Governorship without the permission of His Majesty, or neglects or declines to execute the duties of the office satisfactorily, the Secretary of State may, by writing under his hand, declare that that person has forfeited all claim to any pension under this Act, and the claim to pension shall thereupon be forfeited accordingly.

**9. Power to grant a reduced pension in special cases.]—**(1) Where in any special case it appears to the Secretary of State and the Treasury that it is impracticable to find appropriate employment in the public service for a person who has served as a Governor within the meaning of this Act, and who would be entitled under the foregoing provisions of this Act to receive a pension under this Act if he had attained the age of sixty years, and that it is in the interests of the public service to grant him a pension under this Act, the Secretary of State may, by writing under his hand, grant him such a pension as if he had attained the age of sixty years, but in such a case the full yearly amount of the pension shall be reduced by one hundred and fortieth for every complete month which must elapse between the date on which the pension becomes payable and the time at which the person to whom the pension is granted will attain the age of sixty:

Provided that, if those reductions would amount to more than half the full yearly amount of the pension, the pension shall not be reduced by more than half of its full amount.

(2) A pension may be granted in respect of service in the permanent Civil Service of the State to any Governor who receives a pension under this section in the same manner as if he had received a pension under the foregoing provisions of this Act.

(3) A minute of the Secretary of State, approved by the Treasury, granting a pension under this section shall set forth the amount of the pension granted and the reasons for the grant, and shall be laid before Parliament.

**10. Provision as to determining amount of service as Governor.]** The Secretary of State may, with the consent of the Treasury, determine under what conditions and to what extent any person shall be deemed for the purposes of this Act to have been serving as a Governor within the meaning of this Act while serving as provisional Governor, or while proceeding to his government, or while absent from his government with the permission of His Majesty.

**11. Provision of money for pensions.]** All pensions granted under this Act shall be paid out of moneys provided by Parliament, and a statement of all such pensions shall be laid annually before Parliament.

**12. Interpretation, repeal, and short title.]—**  
(1) For the purposes of this Act—

The expression "Governor" means the Governor or administrator of any part of His Majesty's dominions (exclusive of the British Islands and of British India), or of a British Protectorate, and includes the High Commissioner of Cyprus, and the expression "Governorship" shall be construed accordingly;

The expression "service in the permanent Civil Service of the State" means service in respect of which a pension may be granted under the Superannuation Acts, 1834 to 1909;

The expression "pension" includes any superannuation or other retiring allowance, including any Navy or Army retired pay, and also includes any capital sum paid on or in respect of retirement, or by way of commutation of a pension payable periodically;

Where any pension or any part thereof consists of a capital sum, the yearly amount of that sum shall, for the purpose of this Act, be taken to be the yearly amount which would actuarially be the equivalent of the capital sum, having regard to the expectation of life of the person receiving the sum.

(2) The Acts specified in the Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule:

Provided that—

(a) In section two of the Pensions (Colonial Service) Act, 1887 [50 & 51 Vict. c. 13], a reference to this Act shall be substituted for a reference to the Colonial Governors (Pensions) Acts, 1865 [28 & 29 Vict. c. 113], and 1872 [35 & 36 Vict. c. 29]; and

(b) The repeal shall not affect the rights of any person to whom a pension has been granted under the enactments repealed to receive that pension; and

(c) The repeal shall not affect the rights of any person who is serving or has served as a Governor within the meaning of this Act at the time of the passing of this Act to receive a pension under the repealed enactments in cases where he is entitled to receive a pension under those enactments but not entitled to receive a pension under this Act; and

(d) If a person who is serving or has served as a Governor within the meaning of this Act at the time of the passing of this Act subsequently becomes entitled to receive a pension in respect of that service under this Act, and would also have been entitled to receive a pension under the repealed enactments, a pension may be granted to him at his option either in accordance with the provisions of this Act or in accordance with the provisions of the repealed enactments.

(3) This Act may be cited as the Pensions (Governors of Dominions, &c.), Act, 1911.

#### SCHEDULE.

##### ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
28 & 29 Vict. c. 113.	The Colonial Governors (Pensions) Act, 1865.	The whole Act.
35 & 36 Vict. c. 29.	The Colonial Governors (Pensions) Act, 1872.	The whole Act.
50 & 51 Vict. c. 13.	The Pensions (Colonial Service) Act, 1887.	Sections three, four, and five.

#### CHAPTER 25.

##### [GOVERNMENT OF INDIA ACT AMENDMENT ACT, 1911.]

An Act to amend the Government of India Act, 1858. [18th August 1911.]

Be it enacted, &c.:

**1. Amendment of 21 & 22 Vict., c. 106.]** In section eighteen of the Government of India Act, 1858, the words "or to his legal personal representative such gratuity" shall be inserted after the words "such compensation, superannuation, or retiring allowance" where they secondly occur, and the words "or to personal representatives of such persons" shall be inserted after the words "public service," and also at the end of the section.

**2. Confirmation of past grant of gratuity.]** Any grant to the legal personal representative of a deceased officer or servant on the establishment of the Secretary of State in Council made out of the revenue of India before the passing of this Act shall be deemed to have been lawfully made.

**3. Short title.]** This Act may be cited as the Government of India Act Amendment Act, 1911.

#### CHAPTER 26.

##### [TELEPHONE TRANSFER ACT, 1911.]

An Act to make provision in relation to the transfer to the Postmaster General of the plant, property, and assets, and of the staff of the National Telephone Company, Limited, and for the further improvement of Telephonic Communication.

[18th August 1911.]

Be it enacted, &c.:

#### PART I.

##### FINANCIAL PROVISIONS.

**1. Powers for discharge of telephone purchase money.]—**(1) The Treasury may, for the purpose of providing for the payment of the telephone purchase money as defined by this Act,—

(a) notwithstanding anything in the Exchequer and Audit Departments Act, 1866 [29 & 30 Vict., c. 39], treat any sums paid to the Postmaster-General by the National Telephone Company, Limited (hereinafter referred to as the Company), on account of sums paid in advance to the Company by subscribers in respect of services to be rendered during a future period, as sums to be applied in payment of the purchase money; and

(b) issue out of the Consolidated Fund or the growing produce thereof any sums which may be required for the payment of that part of the telephone purchase money which is payable in cash, so far as provision is not otherwise made for that payment; and

(c) issue to the Company, or to such persons as the Company may direct, such terminable annuities as may be required for the discharge of that part of the telephone purchase money which is not payable in cash.

(2) If so agreed between the Treasury and the Company, the Treasury may, instead of issuing terminable annuities for the discharge of that part of the telephone purchase money which is not payable in cash, issue to the Company or to such persons as the Company may direct, such amount of Exchequer bonds, bearing interest at the rate of three per cent. per annum, as may be agreed upon between the Treasury and the Company.

Any Exchequer bonds so issued shall be paid off by the Treasury at the rate of one hundred pounds sterling for every one hundred pounds of the bond, together with all arrears of interest, before the expiration of such period not exceeding twenty years, and at such times within that period, and in such amounts and manner as may be fixed by the Treasury.

Any Exchequer bonds so issued shall, notwithstanding anything in section twenty-six of the Exchequer Bills and Bonds Act, 1866 [29 & 30 Vict., c. 25], be made out and issued with

coupons for the interest becoming due thereon for a term not exceeding twenty years from the date thereof.

**2. Grant for the purpose of the Telegraph Acts.]** The Treasury may, with a view to the development of that part of the telegraphic system of the United Kingdom which is called the telephonic system, without prejudice to the exercise of any powers previously given for the like purpose, issue out of the Consolidated Fund or the growing produce thereof such sums, not exceeding in the whole the sum of four million pounds, as may be required by the Postmaster-General for the purpose of developing the telephonic system aforesaid according to estimates approved by the Treasury.

**3. Borrowing for purposes of issues out of Consolidated Fund.]** The Treasury may, if they think fit, with a view to providing money for sums authorised under this Act to be issued from the Consolidated Fund for the purpose of the payment of the telephone purchase money, or for the purpose of the development of the telephonic system, or for repaying to that fund all or any part of the sums so issued, borrow by means of terminable annuities for a term not exceeding twenty years, and all sums so borrowed shall be paid into the Exchequer.

**4. Charge on Consolidated Fund of terminable annuities and Exchequer bonds.]** Any terminable annuities created under this Act for the purpose of providing money for sums authorised to be issued out of the Consolidated Fund, or for the purpose of the discharge of the telephone purchase money, and the principal of and interest on any Exchequer bonds issued for the purpose of the discharge of the telephone purchase money, shall be paid out of moneys provided by Parliament for the service of the Post Office, and, if those moneys are insufficient, shall be charged on and paid out of the Consolidated Fund of the United Kingdom or the growing produce thereof.

**5. Audit.]** The Postmaster-General shall, within eight months after the end of every financial year in which money is issued or expended under this Act, cause to be made out an account, in the form required by the Treasury, showing the money expended and borrowed and the securities created under the Telegraph Act, 1892 [55 & 56 Vict., c. 59], the Telegraph (Money) Act, 1896 [59 & 60 Vict., c. 40], the Telegraph (Money) Act, 1898 [61 & 62 Vict., c. 33], the Telegraph Act, 1899 [62 & 63 Vict., c. 38], the Telegraph (Money) Act, 1904 [4 Edw. 7, c. 3], the Telegraph (Money) Act, 1907 [7 Edw. 7, c. 6], and this Act, and the account of expenditure under those Acts shall be audited and reported on by the Comptroller and Auditor-General as an appropriation account in manner directed by the Exchequer and Audit Departments Act, 1866 [29 & 30 Vict., c. 39].

#### PART II.

##### RIGHTS OF COMPANY'S OFFICERS TO SUPERANNUATION ALLOWANCES.

**6. Provisions as to superannuation of transferred officers.]** In the application of the Superannuation Acts, 1834 to 1909, to a transferred officer who on his transfer is appointed to a pensionable office, or is appointed to such an office subsequently to his transfer, having since the date of his transfer served continuously in the Civil Service, the following modifications shall be made in favour of the officer:—

(1) Appointment with a certificate from the Civil Service Commissioners shall not be required, notwithstanding that the appointment is not held directly from the Crown;

(2) Continuous service with the Company shall be treated as service in the office to which an officer is first transferred for the purpose of calculating the period of ten years' service required as a condition for entitling a civil servant to a superannuation allowance under the Superannuation Acts, 1834 to 1909, and the period of five years' service required as a condition for entitling a civil servant to a gratuity under section two of the Superannuation Act, 1909 [9 Edw. 7, c. 10]:



- (3) The conditions mentioned in the foregoing paragraph shall not apply in the case of an officer who has served continuously in the Company's service from the fifteenth day of August, nineteen hundred and four to the date of his transfer:
- (4) The superannuation allowance which may be granted to an officer who would not be entitled to a superannuation allowance but for the foregoing provisions shall be calculated at the same rate for each completed year of service in a pensionable office as that prescribed under the Superannuation Acts, 1834 to 1909, for civil servants who have entered the service after the passing of the Superannuation Act, 1909, and completed ten years' service in a pensionable office:
- (5) If the officer is not a contributor to the Company's pension fund, or has not assigned to the Postmaster General his share in that fund, his continuous service with the Company prior to the date of his transfer up to a period not exceeding two years shall be treated as service in the office to which he is first transferred:
- (6) In the case of a contributor to the Company's pension fund, his service during the period of contribution and, in the case of an original member of the fund, the whole of his continuous service with the Company, shall, if he assigns to the Postmaster General his share of the fund, be treated as service in the office to which he is first transferred:
- (7) In the case of an original member of the Company's pension fund to whom a superannuation allowance is granted on or after his attaining the age of sixty years, the amount of that allowance, together with the annual value, actuarially determined, of any additional allowance granted to him under sub-section (2) of section one of the Superannuation Act, 1909, shall not be less than two-thirds of the amount which he was receiving as salary on the first day of January eighteen hundred and ninety-six, together with the amount of any additional pension purchased under the terms of the deed of trust creating the Company's pension fund by means of contributions made to the fund in respect of increments of salary accruing during the years eighteen hundred and ninety-six to nineteen hundred and eleven, inclusive—

For the purposes of this section—

"A contributor to the Company's pension fund" means an officer who has contributed continuously to that fund up to the date of his transfer;

Service with the Company includes service with any other telephone company which has been amalgamated with or absorbed by the Company, or with any authority whose telephone undertaking or business has been taken over by the Company;

An officer shall be deemed to assign to the Postmaster General his share of the Company's pension fund if he assigns to the Postmaster General any share of the fund to which he may be entitled on the fund being apportioned amongst the members thereof or otherwise wound up, or, in the case of an officer who is appointed to a pensionable office after the fund is so apportioned or otherwise wound up and has not previously assigned his share, if he pays over to the Postmaster General the amount of his share, together with compound interest at the rate of three per cent. per annum, calculated from the date of the receipt of his share.

**7. Provision as to Gratuities to transferred officers.]** Subject to the provisions of this Act, in the application of section four of the Superannuation Act, 1887 [50 & 51 Vict., c. 67], to a transferred officer who is not on his transfer or

subsequently appointed to a pensionable office in the Civil Service, continuous service with the Company shall be treated as service in the office to which the officer is first transferred for the purpose of calculating the qualifying period mentioned in that section.

### PART III.

#### GENERAL.

**8. Temporary provisions as to transfer.]** For the purpose of enabling the Company to prepare and conduct their claim for purchase money under the provisions of the purchase agreements, and to enter into agreements with the Postmaster General, and to discharge the liabilities of the Company, and generally to carry on the business of the Company, and to wind up their affairs and dissolve the Company, the Company may, after the thirty-first day of December, nineteen hundred and eleven, temporarily retain for their own use the services of such officers as they may select, to such reasonable number, for such time, and on such conditions as may be approved by the Postmaster General; but the officers so temporarily retained shall be deemed nevertheless for the purposes of the provisions of this Act in relation to the Company's officers to have become officers of the Postmaster General as from the said thirty-first day of December, nineteen hundred and eleven.

**9. Interpretation.]** In this Act, unless the context otherwise requires,—

The expression "the telephone purchase agreements" means certain indentures dated respectively the second day of February and the eighth day of August, nineteen hundred and five and respectively made between the Right Honourable Edward George Villiers Stanley, C.B., commonly called Lord Stanley, His late Majesty's then Postmaster General, on behalf of His late Majesty, of the one part, and the National Telephone Company, Limited, of the other part;

The expression "the telephone purchase money" means such sums as may be payable to the company by virtue of any award or awards of the Railway and Canal Commission in respect of the purchase of the plant, property and assets of the company which the Postmaster General has agreed to purchase or has power to purchase under the purchase agreements together with interest from the thirty-first day of December, nineteen hundred and eleven, at the rate of three per cent. per annum on any amount thereof which is not discharged;

The expression "office" includes any place, situation or employment; and the expression "officer" shall be construed accordingly;

The expression "transferred officer" means any officer of the Company who is employed in the Civil Service of the State on or in consequence of the carrying into effect of the telephone purchase agreements, and the expressions "transfer" and "transferred" as respects an officer shall be construed accordingly;

The expression "pensionable office" means any office service in which is service qualifying the officer for a superannuation allowance under the Superannuation Acts, 1834 to 1909;

The expression "the Company's pension fund" means the pension fund established under the deed of trust creating a pension fund for the employees of the National Telephone Company, Limited, dated the thirtieth day of July, eighteen hundred and ninety-six; and the expression "original member of the fund" means a person who is entitled under paragraph (a) of article two of the said deed of trust to a retiring pension at sixty-five years of age, equal to two-thirds of his salary as on the first day of January, eighteen hundred and ninety-six.

**10. Short title and construction.]**—(1) This Act may be cited as the Telephone Transfer Act, 1911.

(2) This Act may be cited with the Telegraph Acts, 1863 to 1909, and, so far as it relates to employees of the Company, shall be read as one with the Superannuation Acts, 1834 to 1909.

### CHAPTER 27.

#### [PROTECTION OF ANIMALS ACT, 1911.]

An Act to consolidate, amend, and extend certain enactments relating to Animals and to Knackers; and to make further provision with respect thereto.

[18th August 1911.]

Be it enacted, &c. :

- 1. Offences of cruelty.]**—(1) If any person—
- (a) shall cruelly beat, kick, ill-treat, over-ride, over-drive, over-load, torture, infuriate, or terrify any animal, or shall cause or procure, or, being the owner, permit any animal to be so used, or shall, by wantonly or unreasonably doing or omitting to do any act, or causing or procuring the commission or omission of any act, cause any unnecessary suffering, or, being the owner, permit any unnecessary suffering to be so caused to any animal; or
  - (b) shall convey or carry, or cause or procure, or, being the owner, permit to be conveyed or carried, any animal in such manner or position as to cause that animal any unnecessary suffering; or
  - (c) shall cause, procure, or assist at the fighting or baiting of any animal; or shall keep, use, manage, or act or assist in the management of, any premises or place for the purpose, or partly for the purpose, of fighting or baiting any animal, or shall permit any premises or place to be so kept, managed, or used, or shall receive, or cause or procure any person to receive, money for the admission of any person to such premises or place; or
  - (d) shall wilfully, without any reasonable cause or excuse, administer, or cause or procure, or being the owner permit, such administration of, any poisonous or injurious drug or substance to any animal, or shall wilfully, without any reasonable cause or excuse, cause any such substance to be taken by any animal; or
  - (e) shall subject, or cause or procure, or being the owner permit, to be subjected, any animal to any operation which is performed without due care and humanity;

such person shall be guilty of an offence of cruelty within the meaning of this Act, and shall be liable upon summary conviction to a fine not exceeding twenty-five pounds, or alternatively, or in addition thereto, to be imprisoned, with or without hard labour, for any term not exceeding six months.

(2) For the purposes of this section, an owner shall be deemed to have permitted cruelty within the meaning of this Act if he shall have failed to exercise reasonable care and supervision in respect of the protection of the animal therefrom:

Provided that, where an owner is convicted of permitting cruelty within the meaning of this Act by reason only of his having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

(3) Nothing in this section shall render illegal any act lawfully done under the Cruelty to Animals Act, 1876 [39 & 40 Vict. c. 77], or shall apply—

- (a) to the commission or omission of any act in the course of the destruction, or the preparation for destruction, of any animal as food for mankind, unless such destruction or such preparation was accompanied by the infliction of unnecessary suffering; or
- (b) to the coursing or hunting of any captive animal, unless such animal is liberated in an injured, mutilated, or exhausted condition; but a captive animal shall not, for the purposes of this section, be deemed to be coursed or hunted before it

is liberated for the purpose of being coured or hunted, or after it has been re-captured, or if it is under control.

**2. Power for court to order destruction of animal.**—Where the owner of an animal is convicted of an offence of cruelty within the meaning of this Act, it shall be lawful for the court, if the court is satisfied that it would be cruel to keep the animal alive, to direct that the animal be destroyed, and to assign the animal to any suitable person for that purpose; and the person to whom such animal is so assigned shall, as soon as possible, destroy such animal, or cause or procure such animal to be destroyed, in his presence without unnecessary suffering. Any reasonable expenses incurred in destroying the animal may be ordered by the court to be paid by the owner, and thereupon shall be recoverable summarily as a civil debt:

Provided that, unless the owner assent, no order shall be made under this section except upon the evidence of a duly registered veterinary surgeon.

**3. Power for court to deprive person convicted of cruelty of ownership of animal.**—If the owner of any animal shall be guilty of cruelty within the meaning of this Act to the animal, the court, upon his conviction thereof, if they think fit, in addition to any other punishment, deprive such person of the ownership of the animal, and may make such order as to the disposal of the animal as they think fit under the circumstances:

Provided that no order shall be made under this section, unless it is shown by evidence as to a previous conviction, or as to the character of the owner, or otherwise, that the animal, if left with the owner, is likely to be exposed to further cruelty.

**4. Compensation for damage done by cruelty to an animal.**—If any person shall, by cruelty within the meaning of this Act to any animal, do or cause to be done, any damage or injury to the animal or any person or property, he shall upon conviction for the cruelty under this Act, be liable upon the application of the person aggrieved to be ordered to pay as compensation to the person who shall sustain damage or injury as aforesaid, such sum not exceeding ten pounds, as the court before whom he is convicted may consider reasonable:

Provided that this section shall not—

- (a) prevent the taking of any other legal proceedings in respect of any such damage or injury, so that a person be not twice proceeded against in respect of the same claim; nor
- (b) affect the liability of any person to be proceeded against and punished under this Act for an offence of cruelty within the meaning of this Act.

**5. Compliance by knackers with certain regulations.**—(1) Every person who shall carry on, or assist in carrying on, the trade or business of a knacker shall observe and conform to the regulations set out in the First Schedule to this Act, and, if any person, carrying on or assisting in the carrying on of the said trade or business, contravenes or fails to comply with, or causes or procures or permits any contravention or non-compliance with, any such regulation, he shall be liable upon summary conviction to a fine not exceeding ten pounds.

(2) Any constable shall have a right to enter any knacker's yard at any hour by day, or at any hour when business is or apparently is in progress or is usually carried on therein, for the purpose of examining whether there is or has been any contravention of or non-compliance with the provisions of this Act, and, if any person refuses to permit any constable to enter any premises which he is entitled to enter under this section, or obstructs or impedes him in the execution of his duty under this section, he shall, upon summary conviction, be liable to a fine not exceeding five pounds.

(3) For the purposes of section one, which relates to offences of cruelty, of this Act, a knacker shall be deemed to be the owner of any animal delivered to him.

(4) For the purposes of this Act, an animal

shall be deemed to have been delivered to a knacker if it has been delivered either to the knacker himself, or to any person on his behalf, or at the knacker's yard.

**6. Persons licensed to slaughter horses not to be horse dealers at same time.**—(1) It shall not be lawful for any person who shall be licensed to slaughter horses, during the time while such licence shall be in force, to carry on the trade or business of a dealer in horses.

(2) If any person shall act in contravention of this section, he shall be liable upon summary conviction to a fine not exceeding ten pounds.

**7. Animals in pounds.**—(1) Any person who impounds or confines, or causes to be impounded or confined, any animal in any pound shall, while the animal is so impounded or confined, supply it with a sufficient quantity of wholesome and suitable food and water, and, if he fails to do so, he shall be liable upon summary conviction to a fine not exceeding five pounds.

(2) If any animal is impounded or confined in any pound and is without sufficient suitable food or water for six successive hours, or longer, any person may enter the pound for the purpose of supplying the animal therewith.

(3) The reasonable cost of the food and water supplied to any animal impounded or confined in any pound shall be recoverable summarily from the owner of the animal as a civil debt.

**8. Poisoned grain and flesh, &c.**—If any person—

- (a) shall sell, or offer or expose for sale, or give away, or cause or procure any person to sell or offer or expose for sale or give away, or knowingly be a party to the sale or offering or exposing for sale or giving away of any grain or seed which has been rendered poisonous except for bona-fide use in agriculture; or
- (b) shall knowingly put or place, or cause or procure any person to put or place, or knowingly be a party to the putting or placing, in or upon any land or building any poison, or any fluid or edible matter (not being sown seed or grain) which has been rendered poisonous,

such person shall, upon summary conviction, be liable to a fine not exceeding ten pounds:

Provided that, in any proceedings under paragraph (b) of this section, it shall be a defence that the poison was placed by the accused for the purpose of destroying rats, mice, or other small vermin, and that he took all reasonable precautions to prevent access thereto of dogs, cats, fowls, or other domestic animals.

**9. Use of dogs for purposes of draught.**—If any person shall use, or cause or procure, or being the owner permit, to be used, any dog for the purpose of drawing or helping to draw any cart, carriage, truck, or barrow, on any public highway, he shall be liable upon summary conviction in respect of the first offence to a fine not exceeding two pounds, and in respect of the second or any subsequent offence to a fine not exceeding five pounds.

**10. Inspection of traps.**—Any person who sets, or causes or procures to be set, any spring trap for the purpose of catching any hare or rabbit, or which is so placed as to be likely to catch any hare or rabbit, shall inspect, or cause some competent person to inspect, the trap at reasonable intervals of time and at least once every day between sunrise and sunset, and, if any person shall fail to comply with the provisions of this section, he shall be liable, upon summary conviction, to a fine not exceeding five pounds.

**11. Injured animals.**—(1) If a police constable finds any animal so diseased or so severely injured or in such a physical condition that, in his opinion, having regard to the means available for removing the animal, there is no possibility of removing it without cruelty, he shall, if the owner is absent or refuses to consent to the destruction of the animal, at once summon a duly registered veterinary surgeon, if any such veterinary surgeon resides within a reasonable distance, and, if it appears by the certificate of such veterinary surgeon that the animal is mortally injured, or so severely injured, or so

diseased, or in such physical condition, that it is cruel to keep it alive, it shall be lawful for the police constable, without the consent of the owner, to slaughter the animal, or cause or procure it to be slaughtered, with such instruments or appliances, and with such precautions, and in such manner, as to inflict as little suffering as practicable, and, if the slaughter takes place on any public highway, to remove the carcass or cause or procure it to be removed therefrom.

(2) If any veterinary surgeon summoned under this section certifies that the injured animal can without cruelty be removed, it shall be the duty of the person in charge of the animal to cause it forthwith to be removed with as little suffering as possible, and, if that person fail so to do, the police constable may, without the consent of that person, cause the animal forthwith to be so removed.

(3) Any expense which may be reasonably incurred by any constable in carrying out the provisions of this section (including the expenses of any veterinary surgeon summoned by the constable, and whether the animal is slaughtered under this section or not) may be recovered from the owner summarily as a civil debt, and, subject thereto, any such expenses shall be defrayed out of the fund from which the expenses of the police are payable in the area in which the animal is found.

(4) For the purposes of this section, the expression "animal" means any horse, mule, ass, bull, sheep, goat, or pig.

**12. Powers of constables.**—(1) A police constable may apprehend without warrant any person who he has reason to believe is guilty of an offence under this Act, which is punishable by imprisonment without the option of a fine, whether upon his own view thereof or upon the complaint and information of any other person who shall declare his name and place of abode to such constable.

(2) Where a person having charge of a vehicle or animal is apprehended by a police constable for an offence under this Act, it shall be lawful for that or any other constable to take charge of such vehicle or animal, and to deposit the same in some place of safe custody until the termination of the proceedings or until the court shall direct such vehicle or animal to be delivered to the person charged or the owner, and the reasonable costs of such detention, including the reasonable costs of veterinary treatment where such treatment is required, shall, in the event of a conviction in respect of the said animal, be recoverable from the owner summarily as a civil debt, or, where the owner himself is convicted, shall be part of the costs of the case.

**13. Employers and owners to produce drivers or animals if so required.**—(1) Where proceedings are instituted under this Act against the driver or conductor of any vehicle, it shall be lawful for the court to issue a summons directed to the employer of the driver or conductor, as the case may be, requiring him, if it is in his power so to do, to produce the driver or conductor at the hearing of the case.

(2) Where proceedings are instituted under this Act, it shall be lawful for the court to issue a summons directed to the owner of the animal requiring him to produce either at, or at any time before, the hearing of the case, as may be stated in the summons, the animal for the inspection of the court, if such production is possible without cruelty.

(3) Where a summons is issued under either of the foregoing subsections of this section, and the owner or employer, as the case may be, fails to comply therewith without satisfactory excuse, he shall be liable upon summary conviction to a fine not exceeding five pounds for the first occasion, and not exceeding ten pounds for the second or any subsequent occasion, on which he so fails, and may be required to pay the costs of any adjournment rendered necessary by his failure.

**14. Appeals.**—(1) An appeal shall lie from any conviction or order (other than an order for the destruction of an animal) by a court of summary jurisdiction under this Act to quarter sessions.

(2) Where there is an appeal by the owner of an animal from any conviction or order by a

court of summary jurisdiction under this Act, the court may direct that the recognisance required to be entered into under subsection (3) of section thirty-one, which relates to procedure on appeal to general or quarter sessions, of the Summary Jurisdiction Act, 1879 [42 & 43 Vict., c. 49], shall include an undertaking not to sell or part with the animal until the appeal is determined or abandoned, and to produce it on the hearing of the appeal if such production is possible without cruelty.

**15. Definitions.]** In this Act, except the context otherwise require, or it is otherwise expressly provided—

- (a) the expression "animal" means any domestic or captive animal;
- (b) the expression "domestic animal" means any horse, ass, mule, bull, sheep, pig, goat, dog, cat, or fowl, or any other animal of whatsoever kind or species, and whether a quadruped or not which is tame or which has been or is being sufficiently tamed to serve some purpose for the use of man;
- (c) the expression "captive animal" means any animal (not being a domestic animal) or whatsoever kind of species, and whether a quadruped or not, including any bird, fish, or reptile, which is in captivity, or confinement, or which is maimed, pinioned, or subjected to any appliance or contrivance for the purpose of hindering or preventing its escape from captivity or confinement;
- (d) the expression "horse" includes any mare, gelding, pony, foal, colt, filly, or stallion; and the expression "bull" includes any cow, bullock, heifer, calf, steer, or ox; and the expression "sheep" includes any lamb, ewe, or ram; and the expression "pig" includes any boar, hog, or sow; and the expression "goat" includes a kid; and the expression "dog" includes any bitch, whelp, or puppy; and the expression "cat" includes a kitten; and the expression "fowl" includes any cock, hen, chicken, capon, turkey, goose, gander, duck, drake, guinea-fowl, peacock, peahen, swan, or pigeon;
- (e) the expression "knacker" means a person whose trade or business it is to kill any cattle not killed for the purpose of the flesh being used as butcher's meat, and the expression "knacker's yard" means any building or place used for the purpose, or partly for the purpose, of such trade or business, and the expression "cattle" includes any horse, ass, mule, bull, sheep, goat, or pig;
- (f) The expression "pound," used in relation to the impounding or confining of animals, includes any receptacle of a like nature.

**16. Extent of Act.]** This Act shall not apply to Scotland.

**17. Application to Ireland.]** This Act in its application to Ireland shall be subject to the following modifications, namely:—

- (1) (a) Section twenty-three of the Summary Jurisdiction (Ireland) Act, 1851 [14 & 15 Vict., c. 92] (which gives a right of appeal), shall apply as respects any conviction or order under this Act (other than an order for the destruction of an animal), notwithstanding that the fine imposed does not exceed twenty shillings or that the term of imprisonment imposed does not exceed one month;
- (b) A reference to section twenty-four of the Petty Sessions (Ireland) Act, 1851 [14 & 15 Vict., c. 93], shall be substituted for the reference to subsection (3) of section thirty-one of the Summary Jurisdiction Act, 1879.
- (2) Nothing in section eight of this Act shall prevent owners or occupiers of land in Ireland from laying or causing to be laid any poison or poisonous matter as therein described, after a notice has been

posted in a conspicuous place, and notice in writing has been given to the nearest constabulary station.

**18. Repeals.]** Except so far as applying to Scotland, the enactments mentioned in the Second Schedule to this Act are repealed to the extent mentioned in the third column of that schedule.

**19. Commencement, saving for pending proceedings, and short title.]—**(1) This Act shall come into operation on the first day of January, nineteen hundred and twelve.

(2) This Act shall not apply where proceedings have been instituted before the commencement of this Act.

(3) This Act may be cited as the Protection of Animals Act, 1911.

## SCHEDULES.

### FIRST SCHEDULE.

[Section 5.]

1. The name of the knacker, together with the word "knacker," shall be painted or affixed in a conspicuous manner over the door or gate of the knacker's yard.
2. The hair shall be cut from the neck of any horse, ass, or mule directly the animal has been delivered to the knacker.
3. All animals shall be slaughtered, with as little suffering as possible, within two days from the time they have been delivered to the knacker. Any animal which is in pain shall be so slaughtered without delay.
4. All animals shall be properly fed and watered after they have been delivered to the knacker.
5. No animal shall be used or employed for any work after it has been delivered to the knacker.
6. The knacker shall enter in a book kept for the purpose such a full and correct description of the colour, marks, and gender of every animal delivered to him as may clearly distinguish and identify the same, and the name and address of the owner thereof, and the book shall be produced by him before any justice of the peace upon the requirement of such justice, and the knacker shall allow such book to be inspected and extracts to be made therefrom at all reasonable times by any police constable or by any other person authorised by a justice of the peace.
7. No person who is under the age of sixteen years shall be admitted to, or permitted to remain in, the knacker's yard during the process of slaughtering or of cutting up the carcase of any animal.
8. No animal shall be killed in the sight of any other animal awaiting slaughter.
9. The knacker shall not sell or part with alive, or cause or procure or permit any person to sell or part with alive, any animal which has been delivered to him.

### SECOND SCHEDULE.

[Section 18.]

#### ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
26 Geo. 3. c. 71.	The Knackers Act, 1786.	Section four.
7 & 8 Vict. c. 87.	The Knackers Act, 1844.	Section three.
12 & 13 Vict. c. 92.	The Cruelty to Animals Act, 1849.	The whole Act, so far as not already repealed.
17 & 18 Vict. c. 60.	The Cruelty to Animals Act, 1854.	The whole Act.
26 & 27 Vict. c. 113.	The Poisoned Grain Prohibition Act, 1863.	The whole Act.
27 & 28 Vict. c. 115.	The Poisoned Flesh Prohibition Act, 1864.	The whole Act.

Session and Chapter.]	Short Title.	Extent of Repeal.
39 & 40 Vict. c. 13.	The Drugging of Animals Act, 1876.	The whole Act.
63 & 64 Vict. c. 33.	The Wild Animals in Captivity Protection Act, 1900.	The whole Act.
7 Edw. 7. c. 5.	The Injured Animals Act, 1907.	The whole Act.

## CHAPTER 28.

[OFFICIAL SECRETS ACT, 1911.]

An Act to re-enact the Official Secrets Act, 1889, with Amendments.

[22nd August 1911.]

Be it enacted, &c.:

**1. Penalties for spying.]—**(1) If any person for any purpose prejudicial to the safety or interests of the State—

- (a) approaches or is in the neighbourhood of, or enters any prohibited place within the meaning of this Act; or
- (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; or
- (c) obtains or communicates to any other person any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy;

he shall be guilty of felony, and shall be liable to penal servitude for any term not less than three years and not exceeding seven years.

(2) On a prosecution under this section, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place within the meaning of this Act, or anything in such a place, is made, obtained, or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, or communicated for a purpose prejudicial to the safety or interests of the State unless the contrary is proved.

**2. Wrongful communication, &c., of information.]—**(1) If any person having in his possession or control any sketch, plan, model, article, note, document, or information which relates to or is used in a prohibited place or anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under His Majesty or which he has obtained owing to his position as a person who holds or has held office under His Majesty, or as a person who holds or has held a contract made on behalf of His Majesty, or as a person who is or has been employed under a person who holds or has held such an office or contract,—

- (a) communicates the sketch, plan, model, article, note, document, or information to any person, other than a person to whom he is authorised to communicate it, or a person to whom it is in the interest of the State his duty to communicate it, or
- (b) retains the sketch, plan, model, article, note, or document in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it;

that person shall be guilty of a misdemeanour.

(2) If any person receives any sketch, plan,



model, article, note, document, or information, knowing, or having reasonable ground to believe, at the time when he receives it, that the sketch, plan, model, article, note, document, or information is communicated to him in contravention of this Act, he shall be guilty of a misdemeanour, unless he proves that the communication to him of the sketch, plan, model, article, note, document, or information was contrary to his desire.

(3) A person guilty of a misdemeanour under this section shall be liable to imprisonment with or without hard labour for a term not exceeding two years, or to a fine, or to both imprisonment and a fine.

**3. Definition of prohibited place.]** For the purposes of this Act, the expression "prohibited place" means—

- (a) any work of defence, arsenal, factory, dockyard, camp, ship, telegraph or signal station, or office belonging to His Majesty, and any other place belonging to His Majesty used for the purpose of building, repairing, making, or storing any ship, arms, or other materials or instruments of use in time of war, or any plans or documents relating thereto; and
- (b) any place not belonging to His Majesty where any ship, arms, or other materials or instruments of use in time of war, or any plans or documents relating thereto, are being made, repaired, or stored under contract with, or with any person on behalf of, His Majesty, or otherwise on behalf of His Majesty; and
- (c) any place belonging to His Majesty which is for the time being declared by a Secretary of State to be a prohibited place for the purposes of this section on the ground that information with respect thereto, or damage thereto, would be useful to an enemy; and
- (d) any railway, road, way, or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith), or any place used for gas, water, or electricity works or other works for purposes of a public character, or any place where any ship, arms, or other materials or instruments of use in time of war, or any plans or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of His Majesty, which is for the time being declared by a Secretary of State to be a prohibited place for the purposes of this section, on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy.

**4. Attempts to commit offence, or incitement to commit offence, under Act.]** Any person who attempts to commit any offence under this Act, or incites, or counsels, or attempts to procure another person to commit an offence under this Act, shall be guilty of felony or of a misdemeanour according as the offence in question is felony or misdemeanour, and on conviction shall be liable to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence.

**5. Person charged with felony under Act, may be convicted of misdemeanour under Act.]** Any person charged with an offence which is felony under this Act, may, if the circumstances warrant such a finding, be found guilty of an offence which is a misdemeanour under this Act.

**6. Power to arrest.]** Any person who is found committing an offence under this Act, whether that offence is a felony or not, or who is reasonably suspected of having committed, or having attempted to commit, or being about to commit, such an offence, may be apprehended and detained in the same manner as a person who is found committing a felony.

**7. Penalty for harbouring spies.]** If any person knowingly harbours any person whom he knows, or has reasonable grounds for supposing, to be a person who is about to commit or who has committed an offence under this Act, or knowingly permits to meet or assemble in any

premises in his occupation or under his control any such persons, or if any person having harboured any such person, or permitted to meet or assemble in any premises in his occupation or under his control any such persons, wilfully refuses to disclose to a superintendent of police any information which it is in his power to give in relation to any such person he shall be guilty of a misdemeanour and liable to imprisonment with or without hard labour for a term not exceeding one year, or to a fine, or to both imprisonment and a fine.

**8. Restriction on prosecution.]** A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

**9. Search warrants.]—(1)** If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search warrant authorizing any constable named therein to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note, or document, or anything of a like nature or anything which is evidence of an offence under this Act having been or being about to be committed, which he may find on the premises or place or on any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a superintendent of police that the case is one of great emergency and that in the interest of the State immediate action is necessary, he may by a written order under his hand give to any constable the like authority as may be given by the warrant of a justice under this section.

**10. Extent of Act and place of trial of offence.]—(1)** This Act shall apply to all acts which are offences under this Act when committed in any part of His Majesty's dominions, or when committed by British officers or subjects elsewhere.

(2) An offence under this Act, if alleged to have been committed out of the United Kingdom, may be inquired of, heard, and determined, in any competent British court in the place where the offence was committed, or in the High Court in England or the Central Criminal Court, and the Criminal Jurisdiction Act, 1802 [42 Geo. 3, c. 85], shall apply in like manner as if the offence were mentioned in that Act, and the Central Criminal Court as well as the High Court possessed the jurisdiction given by that Act to the Court of King's Bench.

(3) An offence under this Act shall not be tried by any court of general or quarter sessions, nor by the sheriff court in Scotland, nor by any court out of the United Kingdom which has not jurisdiction to try crimes which involve the greatest punishment allowed by law.

(4) The provisions of the Criminal Law and Procedure (Ireland) Act, 1887 [50 & 51 Vict., c. 20], shall not apply to any trial under the provisions of this Act.

**11. Saving for laws of British possessions.]** If by any law made before or after the passing of this Act by the legislature of any British possession provisions are made which appear to His Majesty to be of the like effect as those contained in this Act, His Majesty may, by Order in Council, suspend the operation within that British possession of this Act, or of any part thereof, so long as that law continues in force there, and no longer, and the Order shall have effect as if it were enacted in this Act:

Provided that the suspension of this Act, or of any part thereof, in any British possession

shall not extend to the holder of an office under His Majesty who is not appointed to that office by the Government of that possession.

**12. Interpretation.]** In this Act, unless the context otherwise requires,—

Any reference to a place belonging to His Majesty includes a place belonging to any department of the Government of the United Kingdom or of any British possessions, whether the place is or is not actually vested in His Majesty;

The expression "Attorney-General" means the Attorney or Solicitor-General for England; and as respects Scotland, means the Lord Advocate; and as respects Ireland, means the Attorney or Solicitor-General for Ireland; and, if the prosecution is instituted in any court out of the United Kingdom, means the person who in that court is Attorney-General, or exercises the like functions as the Attorney-General in England;

Expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect, or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note, or document, include the copying or causing to be copied the whole or any part of any sketch, plan, model, article, note, or document; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note, or document;

The expression "document" includes part of a document;

The expression "model" includes design, pattern, and specimen;

The expression "sketch" includes any photograph or other mode of representing any place or thing;

The expression "superintendent of police" includes any police officer of a like or superior rank;

The expression "office under His Majesty" includes any office or employment in or under any department of the Government of the United Kingdom, or of any British possession;

The expression "offence under this Act" includes any act, omission, or other thing which is punishable under this Act.

**13. Short title and repeal.]—(1)** This Act may be cited as the Official Secrets Act, 1911.

(2) The Official Secrets Act, 1889 [52 & 53 Vict. c. 52], is hereby repealed.

## CHAPTER 29.

### [PARSONAGES ACT, 1911.]

An Act to amend the Parsonages Act, 1838, and the Church Building Act, 1839.

[22nd August 1911.]

Be it enacted, &c.:

**1. Short title.]** This Act may be cited as the Parsonages Act, 1911.

**2. Application of purchase moneys paid to Governors of Queen Anne's Bounty under section 8 of 1 & 2 Vict. c. 23.]** Purchase moneys paid to the Governors of the Bounty of Queen Anne under section eight of the Parsonages Act, 1838, shall, as from the date of such payment, but subject to the performance by the said Governors of the duty or trust imposed on them by the said Act, be applicable and disposable by the said Governors for the benefit of the particular benefice on account of which the same shall have been received, in such and the same manner and with such and the same powers of investment and other powers and authorities in all respects according to the rules and regulations of the said Governors for the time being, as if the said purchase moneys had been appropriated by the said Governors to such benefice out of the general

funds and profits of the said Governors or otherwise for the benefit and augmentation thereof: Provided always that, until the complete execution by the said Governors of the duty or trust imposed on them by the said Act, the interest which shall become payable in respect of such purchase moneys shall be added by them to the principal by way of accumulation, unless the said Governors in their uncontrolled discretion shall think fit to pay the whole or part of such interest to the incumbent of such benefice for his own use and benefit.

### 3. Powers of Governors of Queen Anne's

*Bounty to pay off loans in certain cases.* In any case in which the purchase moneys paid to the said Governors under the said section shall arise from the sale of property purchased originally, or built or improved either wholly or in part, by means of a loan under the Clergy Residences Repair Act, 1776 (17 Geo. 3, c. 55), or the Acts amending or extending the same, and any principal money shall still remain owing on account of such loan, it shall be lawful for the said Governors, if they think fit, out of the said purchase moneys to pay and discharge the balance of such principal money or any part thereof.

4. Repeal of section 14 of 2 & 3 Vict. c. 49.] Section fourteen of the Church Building Act, 1839, is hereby repealed so far as the same is inconsistent with this Act.

### CHAPTER 30.

[PUBLIC HEALTH (SCOTLAND) ACT (1897)  
AMENDMENT ACT, 1911.]

An Act to extend the powers of the Public Health (Scotland) Act, 1897.

[22nd August 1911.]

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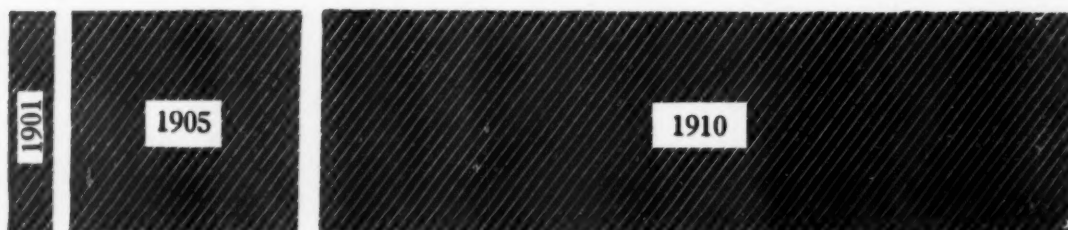
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